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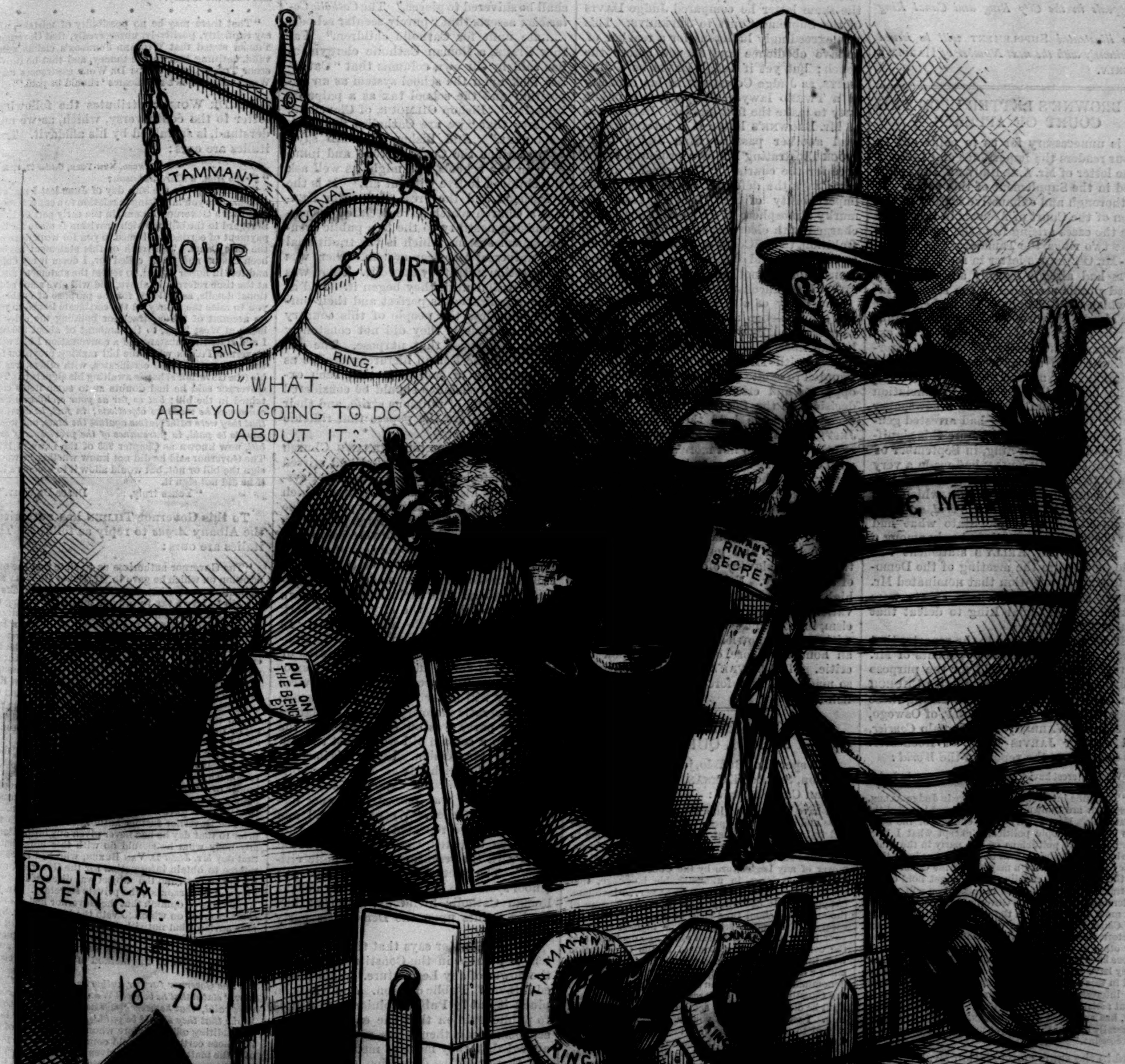
TAMMANY
RING.
OUR
CANAL
RING.
COURT
"WHAT ARE YOU GOING TO DO ABOUT IT?"
PUT ON THE BENCH BY
ANY RING SECRET
POLITICAL BENCH.
1870.
TAMMANY RING
CANAL RING
Th. Nast

THE ELECTIVE SYSTEM; OR, MASTER AND SLAVE.

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HARPER'S WEEKLY.

Saturday, November 13, 1875.

☞ *The eight-page* Supplement *sent out gratuitously with this Number of* Harper's Weekly *contains an important and comprehensive letter by* Albert G. Browne, Jun., *entitled*

"THE COMBINED RINGS,"

in which are discussed the decisions of the Court of Appeals in the City Ring and Canal Ring Suits.

An illustrated Supplement *will be issued gratuitously with the next Number of* Harper's Weekly.

MR. BROWNE'S LETTER UPON THE COURT OF APPEALS.

It is unnecessary for us to point out to our readers the importance and interest of the letter of Mr. A. G. Browne, Jun., published in the Supplement of this paper. It is a thorough and exhaustive history of the action of the Court of Appeals in this State upon the cases arising from the proceedings of the two rings, the Tammany and the canal. Mr. O'Conor's letter in reply to Judge Davis had already sharply and decisively turned public attention to the singular favor which the decisions of the highest court have always shown toward the public plunderers. Before Mr. O'Conor's letter the extraordinary denunciation of the late Attorney-General; an uncompromising enemy of the Canal Ring, and an honorable advocate at the bar of the court—a denunciation made by the Chief Justice to a newspaper reporter for publication—had arrested general attention. And still before this significant ebullition of feeling, in September of last year, Mr. John Kelly had made a very plain statement in regard to the Chief Justice and another of the judges, which was published in the New York *World*, and had announced to the whole State what had been observed and mentioned only among a few persons. Mr. Kelly's statement was made just before the meeting of the Democratic State Convention that nominated Mr. Tilden, and when strenuous efforts were making by the Canal Ring to defeat that nomination.

Mr. Kelly mentioned to the reporter that a meeting of Democratic opponents of Mr. Tilden had been just held for the purpose of bringing forward Chief Justice Church as a candidate, and he named among these opponents Mr. Delos De Wolf, of Oswego, Mr. Joseph Warren, of the Buffalo *Courier*, and Senator Jarvis Lord, of Rochester. We quote from the report in the *World:*

> "'What interest have these men, Mr. Kelly, in Judge Church?'
>
> "'The same interest that they have in Judge Allen. These men are known to belong to what is called the Canal Ring. Now I don't know enough of the bearings of these people politically, except what I have heard from the politicians of our party in the State. If what is said about them be true, it has been their policy to get control of a majority of the Canal Board for the purpose of enabling them to get hold of the contracts given out on the canals. You will readily understand, then, that the Governor's influence, though the most honest man in the world, were it known by the Canal Board that he was friendly to these contractors, would be all-powerful in their favor as against any other men who might apply for this kind of work. These have been always very friendly to Judge Church. They have added what power and strength they have had in this and other localities to the advancement of the interests of that gentleman. They have been of great assistance to him politically. The same interest, too, has sustained Judge Allen. I don't think it is generally known that Judge Church and Judge Allen are cousins.'"

And in the same conversation Mr. Kelly replied to the question,

> "'Was there any affiliation between the old Tammany Ring and what is now known as the Canal Ring?'
>
> "'Yes, there was friendship existing between those people. I am informed that Governor Hoffman usually made his appointments to office on the recommendation of the defunct Tammany Ring at the solicitation of what is known as the Canal Ring.'"

Mr. Kelly then mentioned the Rochester *Union* and the Buffalo *Courier* as "two papers which are known to be under these influences."

Public attention has thus been repeatedly called within the last year to the relation of some of the members of the Court of Appeals to the rings of public peculators. It is notorious that Judge Church and Judge Allen were the candidates of the Canal Ring for the Governorship as against Mr. Tilden, and it is not improbable that if that interest was anxious, for its own purposes, to have one of them in the Executive Chamber, it is not displeased to see them both upon the bench of the highest court in the State. There was a disposition when Mr. O'Conor's letter was published to protest against any criticism of the decisions of that court as impairing respect for the judiciary. But the first and supreme condition of respect for the judiciary is that it be respectable, above suspicion or innuendo. As it is one of the paramount duties of the press to promote that respect, the duty can be fulfilled only by the strictest care that the absolute impartiality of the bench be maintained. It is unquestionably a grave misfortune for any community to lose for its courts the reverence which they should command. But it is a great and constant peril for any community to accord that reverence unworthily. The judges themselves should be the first to feel this truth. Ex-Judge Comstock, in a letter reviewing that of Mr. O'Conor, laid great emphasis upon the necessity and duty of cultivating respect for the courts; and in the same letter he compared Judge Davis of the Supreme Court to Jeffreys. This was exceedingly ludicrous for a teacher of passive obedience and silence before the bench; but yet if Judge Davis be a Jeffreys, as Judge Comstock in his capacity as a Tweed lawyer alleges, it is a public duty to make the fact known. In the light of Mr. Browne's letter it is interesting to read another passage from Judge Comstock illustrating his own profound reverence for the courts. "The transfer of the case," says the defender of the presumable impeccability of the bench, "from the murky atmosphere of Judge Davis's court, charged with electric passion and vaulting ambition, to the Court of Appeals, where all is calmness and deliberation, was like a translation to another world." Judge Comstock is an unconscious humorist.

The party of slavery used to inculcate the same silence and passivity before the courts, especially when they decided against human liberty. Mr. Douglas, in his great debate with Mr. Lincoln, constantly attempted to excite prejudice against him for opposing and criticising the Dred Scott decision of the Supreme Court. But the American people held the opinion of Mr. Jefferson, that "our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps." The people denounced the political dictum of that decision. They freely discussed and criticised the purposes of the judges in making it. They said plainly that slavery sat on the bench and gave the opinion, and they hurled slavery off the bench and out of the country. No officer among us sits so high that his conduct is sacred from observation, criticism, and exposure. That criticism, indeed, must be made in good faith, with ample knowledge, decently, and with an honest purpose, or it recoils upon the critic. Mr. Browne's letter is a criticism so made, and therefore we are glad to publish it.

SENATOR KERNAN ON THE SCHOOL QUESTION.

In a speech at Buffalo, just before the late election, Senator Kernan, who is a zealous Roman Catholic, said:

> "I have been grieved in a crisis like this to see the press and even public speakers seeking to turn aside and trying to stir up that worse than all passions in any land, religious strife.... Now, my fellow-citizens, the public schools of this State are planted beyond the power of any Legislature by the Constitution of the State. It declares, in unmistakable language, that the common-school fund shall be preserved inviolate. [Applause.] It declares further that the income of the common-school fund shall be applied only to the support of common schools. The highest court of your State more than fifteen years ago declared that the common schools spoken of in the Constitution were the public schools, and that no Legislature could allow a dollar of that money to go to the support of a denominational or sectarian school. [Applause.] And the Constitution also declares that no public money shall be distributed to any sectarian or private institution. I would appeal to you as earnestly as I would appeal to my best friend if I thought a danger was hanging over us. No: the common schools are in your Constitution, and should be maintained as public schools, and will have to be, and rightfully, too. Wherever all of the children of the State can go and get a secular education, the schools should be maintained so that the feeling of no parent or child, no matter what their religion may be, should be wounded in that school. I grieve to see that our opponents—I trust not many of them—seeming to feel weak on the subject of reform, are seeking to get up religious antipathies."

Here are two assertions—one, that the sectarian school question has been raised; and the other, that the Constitution of the State secures the present system, and therefore that to discuss the question is merely to stir up religious strife. Who, then, is responsible for the discussion? Who has raised the question? Until within a very few years, although the country has been always full of Protestant sects, the subject was never one of general debate. And why? Because no sect, as such, had ever proposed to change the system. The agitation of the question, the stirring up of religious strife, to which Mr. Kernan alludes, began with the first demonstration of hostility to the present system, and that demonstration came only, and comes only now, from the hierarchy of Mr. Kernan's Church.

The Roman hierarchy is bitterly opposed to the principle of the American public-school system. That principle has been denounced by the Pope, who is regarded by his Church as infallible. The organs of the hierarchy in this country and many of the leading bishops frankly denounce the system. The *Freeman's Journal* says that "education is not the work of the State at all." And again, "You look to your children, and we'll look to ours." The *Tablet* says that it does not oppose State schools "if the State provides schools for us in which we can teach our own religion." And again, "We hold education to be a function of the Church, not of the State; and in our case we do not and will not accept the State as an educator." The *Catholic Telegraph* says, "It will be a glorious day for Catholics in this country when......our school system shall be shivered to pieces." The *Catholic Columbian* asserts that "purely secular schools ......are unfit for Catholic children." Father Stack, a Roman Catholic clergyman, has said in our own columns that "Catholics look upon the school system as an imposition and the school tax as a palpable injustice." Bishop Gilmour, of Cleveland, declares that "we are Catholics first, citizens next." And Bishop M'Quaid says, "To sacrifice the Catholic tone and influence in the schools, you might as well ask the children to live without air." It is the priesthood and the press of Senator Kernan's Church which have declared uncompromising hostility to the free public secular school system, which is the traditional and universal American system. There was no question until they raised it. There was no discussion until they began it. And as their organization is perfect and their purpose relentless, the people of this country would be fools if they did not constantly expose and resist that purpose. The one thing that the Roman hierarchy desires as the condition of success is that such exposure and resistance should be considered the stirring up of religious strife, and their simplest tools are the papers that ridicule the discussion.

And as it is Senator Kernan's Church which has raised the question and stirred up the strife by attacking the school system, so it is his political party upon which the enemies of the schools depend. The reason of this is that a very large proportion of the most ignorant foreign vote belongs to that Church, and the condition of its support is concession to the priestly demands. This concession has been made by the Democratic leaders. The exclusive favors shown to the hierarchy in the city of New York under Democratic rule are notorious. In Ohio the organ of the Roman Catholic archbishop stated last year that nine-tenths of the Catholic voters affiliate with the Democratic party "on account of past services that they will never forget," and it warned the Democratic majority in the Legislature that the party was on trial, and that the vote upon a certain bill would test the sincerity of its profession. Under this insolent threat of the withdrawal of the Catholic vote, the Democratic majority passed the bill. When it was passed, the paper disdainfully remarked, "We plainly said, and we would have repeated it if the measure had been defeated, that the party would meet with the resentment of Catholic citizens." The sectarian design against the school system exists. It is the design of the Roman Catholic hierarchy, and that hierarchy counts upon the Democratic party for support.

But the Senator says that the school system is planted in the Constitution beyond the power of any Legislature. What planted it there? Public opinion. And what can pluck it out? Public opinion. And it is to public opinion that the enemies of the schools address themselves, and it is in that appeal that they must be met. That is to say, there must be discussion, and if discussion "stirs up" religious strife, it is those who have made discussion necessary that are responsible. In New Jersey, we are told, the anti-school vote was only two thousand. That is true, and every good American citizen will rejoice. But which is the more important fact, the small vote or the open appeal of the priests to their congregations to vote against the school system? And if because of the small vote the subject should be derisively dismissed as a mare's-nest, how long before the steady and shrewd labor of the priests would make the vote larger? If any man thinks that there will never be any serious ecclesiastical assault upon the schools, he will sincerely deprecate any discussion of the subject. But if there probably will be such an attack, the patriotic and wise course is not to assume that it is not yet serious enough to talk about.

THE WILLARD JOHNSON CONTROVERSY.

In alluding to the reiterated charges against Governor Tilden in regard to the Willard Johnson contract, we said that, under the circumstances, an explanation was indispensable. This explanation has been made, and we give it on another page. The facts, so far as known at the time, we mentioned in our article, and we repeat the accusation as made by the Albany *Evening Journal:*

> "The accusation is that Governor Tilden passed the award of $55,000 on the Willard Johnson contract when, according to his message, he knew and had denounced it as full of fraud; that he allowed the award at the solicitation of Delos De Wolf, the friend and representative of Willard Johnson; that he assured Delos De Wolf that Johnson's claims should be paid; and that, on the strength of these assurances to Delos De Wolf, Johnson raised and secured the money on the certificates. It is true that the tax has not yet been collected, but it has been levied, and will be paid by the people this fall; and on the strength of Governor Tilden's assurances to Delos De Wolf, Willard Johnson has been able to anticipate the tax and raise the money."
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> * * * * * * *
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> "That there may be no possibility of mistake, we say explicitly, positively, unreservedly, that Governor Tilden stated that Willard Johnson's claims were valid, entitling him to the money, and that he (Governor Tilden) gave Delos De Wolf assurances that Willard Johnson's certificates 'should be paid.'"

Mr. De Wolf contributes the following letter to the controversy, which, as we understand, is sustained by his affidavit. The italics are ours:

> "Oswego, New York, *October* 27, 1875.
>
> "*To the Hon. Willard Johnson:*
>
> "Dear Sir,—On the 30th day of June last I made a statement to you in writing in relation to a conversation I had with Governor Tilden, in the early part of May, in regard to the bill in which provision is made for the payment of certificates issued to you for work done on the Erie Canal. The truth of this statement having been denied and proof called for, I deem it my duty, and feel in honor bound, to repeat the statement made at the time referred to above, and will give some additional details, as follows, for the purpose of enabling you to raise the money on the certificate issued to you on account of the contract for building the side-cut locks at West Troy, to the amount of about $50,000. I will state the substance of a conversation I had with Governor Tilden while the bill making provision for the payment of these certificates, with others, was in his (the Governor's) hands awaiting his signature. The Governor said he had doubts as to some items contained in the bill; *but so far as your certificates were concerned, he made no objections; in fact, he admitted that they were valid claims against the State, and would have to be paid, in pursuance of the provisions of said bill*, now known as Chapter 263 of the Laws of 1875. The Governor said he did not know whether he would sign the bill or not, but would allow it to become a law if he did not sign it.
>
> "Yours truly, Delos De Wolf."

To this Governor Tilden has authorized the Albany *Argus* to reply as follows. The italics are ours:

> "The Governor authorizes us to state that the only occasion on which he gave to Mr. Delos De Wolf any intimation as to what disposition he should make of the bill to levy a tax to provide means for paying canal awards and canal certificates was on the afternoon of the last day before the bill would become a law, without the Executive sanction, unless it were vetoed. Late in that afternoon Mr. De Wolf came to the Executive Chamber and asked the Governor what he meant to do with that bill. The Governor assured him that he should either sign the bill or allow it to become a law. The interview was very brief, and the Governor did not say one word in respect to the particular certificates in which Mr. De Wolf was interested, or the work in respect to which they had been issued by the public officers.
>
> "Mr. De Wolf had on a previous occasion made substantially the same inquiry, and then stated as the reason why he sought the information that he was the holder of some of these certificates for an advance of money, as the Governor understood. On that occasion the Governor gave no intimation as to his action.
>
> "The Governor further authorizes us to state that prior to that day he had never given any intimation to any body what he should do with this bill; that on that day Mr. John D. Van Buren, who had acted as a referee to obtain information for the Governor, made the final report, and the subject was discussed between him and Mr. Stebbins, the private secretary. Mr. Van Buren was of opinion that the Governor had not sufficient grounds on which to veto the bill, and Mr. Stebbins advised that notwithstanding there were not sufficient grounds to veto it, the Executive signature should be withheld to mark suspicion of the award and disapproval of the method of issuing the certificates.
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> "*The Governor further authorizes us to state that he never 'stated that he believed* Willard Johnson's *claims were valid,' that he never 'gave assurances to* Delos De Wolf *that they should be paid.'* The Governor is not the auditing officer, before whom the question of paying these certificates would come. He had no power over the matter. If he had given such assurances, they would have been futile and ridiculous. He had never assumed jurisdiction of that question. He never gave any such assurance to any person. He left the action on these matters to the auditing officers, where the law rested it, and subject to the results of such investigations as should be made.
>
> "There were four classes of certificates for which the bill provided means of payment. Three were for awards. The first class of these embraced 165 awards. In all these three classes the certificates had been issued in a semi-negotiable form to parties in whose favor the tribunals of the State had decided. The fourth class were certificates which had been issued to parties who had done work in excess of the existing appropriations.
>
> "The main urgency on the Governor to sanction this bill was from Canal Auditor Thayer. He on several occasions went to the Executive Chamber. He insisted that the public service required the passage of the bill. He said that it would make no difference in respect to the payment of any improper claim. He told Mr. Van Buren that if the bill did not become a law, 'we would have no canals.' On one occasion, when so urged, the Governor said to him, in the presence of Mr. Stebbins and Mr. Van Buren, 'Well, if this bill becomes a law, will you see to it that no im-

proper claim is paid?' He answered emphatically that he would.

"The Governor had no suspicion of the good faith of the Auditor, who was to be the auditing officer in all cases under the bill. The Governor allowed the bill to become a law, and whenever the investigating commission has examined any case to which the bill would apply, the Governor has turned the evidence over to the Attorney-General, with instructions to take measures to protect the rights of the State. In this very case the Governor turned over the report of the commission to the Attorney-General, and on the 9th of July the Auditor was warned not to pay this claim.

"*Mr.* De Wolf's *statement that the Governor had doubts as to some items contained in the bill, but had no objections to the* Willard Johnson *certificates, is, we are authorized to state, exactly the reverse of the truth.* The special objections of the Governor are fully stated in his memorandum to Assembly bill No. 560, and were to certificates issued for work in excess of appropriations. This is the very class which embrace the Willard Johnson certificates. Mr. De Wolf's statement is ambiguous or equivocal in one particular. He says the Governor made no objection to these certificates. It does not appear whether he means only that the Governor did not state any objection, or whether he means that the Governor said he had no objection. *The Governor authorizes us to state that he never said to Mr.* De Wolf *that there was no objection, or that he had no objection, to these certificates. The Governor further authorizes us to state that he never said to Mr.* De Wolf *that he 'admitted' that the claims of* Willard Johnson *'were valid claims against the State, and would have to be paid,' nor ever said any thing to that effect.* We are further authorized by Mr. Stebbins and Mr. Van Buren to state that they have read this article, and that the statements which relate to them contained herein are correct."

Here is a direct conflict of veracity between the Governor and Mr. De Wolf. The presumption of greater truthfulness is with the Governor, for he had already denounced the Johnson claim in his Message, and his political career and success were dependent upon his fidelity to the policy he had adopted. No personal corruption could be imputed or imagined, and no merely partisan consideration can be supposed so strong as to persuade him to put himself in the power of the Ring that he was publicly fighting. On the other hand, Mr. De Wolf was personally and pecuniarily interested in the passage of the bill, and would be disposed to remember the interview as favorable to his interested desires. In the absence of further testimony—and there can hardly be any other, as no one else was present at the interview—we believe the statement of Governor Tilden. Elsewhere we consider the reasons given by him for permitting a bill to become a law which provided for the payment of fraudulent claims.

THE GOVERNOR'S MEMORANDUM.

The "Willard Johnson bill" was an act authorizing a tax for the payment of certain canal awards and of certificates of indebtedness. The name of Willard Johnson does not appear in it, nor that of any other person whose claims the bill covered. In a memorandum written to explain why he allowed such a bill to become a law the Governor says that while the bill was pending before him it was quite impossible for him to

> "inquire into the equities attaching to such certificates in their origin or in their transfer."

But the particular claim of Willard Johnson covered by the bill, and which, as the Governor knew to exist, he might very naturally have suspected to be in the bill, he had already shown to be fraudulent. No time, therefore, was necessary for that inquiry, for it had been already made. The Governor continues:

> "I therefore, not without some reluctance at any sanction of such a system, and not without much distrust of awards of which I saw no means of resisting the payment, allowed this bill to become a law."

But was not a veto a means of resisting awards which he distrusted? And if the veto would have embarrassed and delayed honest claimants, was that a valid reason for authorizing, so far as he was concerned, the payment of those whom he knew to be dishonest claimants? The Governor evidently felt the force of this very obvious question, for he continues:

> "If investigation shall disclose any thing to enable the State to withhold payment in such cases, that defense will be equally available until the tax shall be collected next year and payments actually made. The Canal Auditor, while advising the sanction of this bill, assured me that he should be vigilant to avail himself of any just ground of protecting the State from wrong in the premises."

Governor Tilden would certainly not accept this as a satisfactory explanation even from a subordinate agent in a similar transaction. For what is the whole story? The Governor had exposed a vast and intricate system of canal frauds. A bill is presented to him authorizing a tax to pay certain canal awards and certificates. Notwithstanding his knowledge of the system of frauds, he does not inquire into the details of any of those to which the bill relates. If he had done so, he would have instantly discovered one which he had already published as fraudulent. But saying that he disapproves the system under which such bills are passed, he permits it to become a law, adding that if any certificate or award should prove to be dishonest, the Auditor would protect the State. This does not seem to us "a masterly exhibition of the mental resources and the moral qualities which Governor Tilden brings to the discharge of the least or the greatest of the duties of his office," which is the grand style in which it is described by the paper that sneered at him as "a railroad lawyer up town" when he began to move in the Tweed reform. On the contrary, it seems to us a mistaken view of the duties of his office.

A simple inquiry would have shown him that the bill covered what he knew to be a fraudulent payment, and he had no right under the circumstances to omit all inquiry, and to throw upon the Auditor the duty of protecting the State. The people elect the Governor to do that duty, first of all. Governor Tilden may have thought the Auditor to be honest, although the Canal Commission have since publicly denounced him as a knave; but, honest or dishonest, the Governor should have reflected that the Auditor's duty did not begin until his had ended, and his duty was to prevent any possibility of the payment of a fraudulent claim by vetoing the bill. He had no right to evade the responsibility of stopping the payment under the plea that honest claims might not be paid. Honest claims could wait if the condition of paying $380,000 honestly was a risk of paying $55,000 dishonestly. When President Grant signed the bill containing the back pay clause, Governor Tilden and his friends did not admit as an excuse that, if he had not signed it, the appropriations would have failed and an extra session of Congress would become necessary. But if it was the duty of the President not to sign that bill, it was still more the duty of Governor Tilden not to permit this bill, which covered a fraud that he had himself exposed, to become a law. His action was due, however, to a mistaken sense of duty, and not, as we believe, to any kind of unworthy motive.

THE SUPREME COURT UPON THE VOTING OF WOMEN.

The friends of a just extension of the suffrage to women do not seem to understand the situation. They point to an occasional declaration in a political platform as an indication of real interest in the subject. But it is nothing more than a polite bow. The Massachusetts Republican Convention has sometimes put a plank of this kind in its platform. But any friend of the cause who should suppose that the party as a party had any particular interest in the matter would be profoundly mistaken. Has it ever been mentioned in any of the chief speeches that followed the Convention? Has any voter seriously supposed that by any remote possibility his vote would lead to practical action upon the question? The truth is that those who hold, as we do, the opinion that such enfranchisement is desirable are generally Republicans, and the resolution is passed merely as a compliment to an abstract principle and to such of the brethren as favor it, but without the least intention or thought that any measure will be proposed. And if it were proposed, how many of the delegates who pass the resolution, or of the constituency which they represent, would be found supporting it?

The question of the extension of the suffrage to women is one of the gravest that can be entertained by any political community. It arouses at once prejudices which are coeval with civilized society, traditions which have the force of fundamental principles, and a hostility which is held to be instinctive and universal. Moreover, it is a question of pure reason, and in that differs from other political measures and propositions, which have always brute force behind them. There is no conceivable change in the political order at once so radical and so difficult. But there are many of its friends who seem to think that it can be effected by some kind of dodge or trick, and that the present sincere conviction of society upon the subject can be outwitted by some smart lawyer or crafty commentator. It is to some such feeling that the question is due which was recently settled by the Supreme Court of the United States, whether the right of women to vote is not conferred by the Fourteenth Amendment of the Constitution.

Every body knows that it was not intended to confer the right, that it would not have been adopted had it been suspected or known that it did confer the right, and therefore, under the circumstances, the right should not be claimed. The plea that laws may be always strained to serve liberty is dangerous because of the difficult definition of liberty—in other words, because of the plain chance of frightful and disastrous abuse. In a case of immediate and threatening manifest individual injustice a judge will sometimes strain the law, and the public consciousness that the assumption in that case is less harmful than acquiescence condones the irregularity. But the disfranchisement of women is not the kind of menacing wrong against human nature which would justify any forced or juggling interpretation of constitutions and laws. Those who move in such cases are sincere, undoubtedly, but they are exceedingly unwise, for not only does the particular effort fail, but the cause which is served in so doubtful a manner is necessarily injured in reputation.

The Supreme Court has decided unanimously that suffrage is not the necessary privilege of a citizen, and that the amendment adds nothing to his privileges and immunities, but simply furnishes additional guarantees to those which he already has. The argument drawn from a republican form of government is disposed of by the fact that the Constitution accepted the existing State governments as republican, and in none of them was suffrage held to be a necessary privilege of the citizen. No new State admitted to the Union has ever conferred the suffrage upon women; but this has never been held to be a valid objection to the admission. If long and uniform practice can settle the construction of the Constitution, it has been settled upon this subject. The true and frank plan is the proposition of a sixteenth amendment which shall forbid any State to deny the suffrage on account of sex, as the fifteenth forbids the denial on account of race, color, or previous condition of servitude. But the friends of such an amendment, like those who favor "God in the Constitution," must remember that an issue can not be improvised, and they must accept the very evident fact that opinion upon this subject grows not only slowly but reluctantly.

PERSONAL.

Kate Field, in one of her sprightly letters from London to the Louisville *Courier-Journal*, speaks of the Hon. Lewis Wingfield, a younger brother of Lord Powerscourt, whose country-seat is seen by every American traveler who stops at Queenstown. Mr. Wingfield is a sort of Admirable Crichton. His communications to the London *Times* during the siege of Paris gained him no little honor. While writing these admirable letters Mr. Wingfield attached himself to the American ambulance corps in the capacity of surgeon, he having been at one time a close student of surgery in Germany, and won for himself not only the esteem of his associates, but medals for skillful treatment of the wounded. He is so much of an artist as to have painted a large picture, which he intends to send to the Philadelphia Exhibition, and is now painting a picture for the Queen, while engaged also on a novel. His mother is the present Lady Londonderry.

—Archdeacon Denison said not long since that in his own church he never preached, or allowed his curates to preach, more than ten minutes. He has been outstripped in brevity by Rev. G. Brewin, of Wortley, who numbered Mr. Disraeli among his congregation on a recent Sunday; he did up the matter in seven minutes.

—Mr. Moncure D. Conway is having remarkable success with his lectures in Cincinnati. His second, on "Oriental Religions," drew a crowded house, and is described by the *Commercial* as having been "brilliant, with bits of splendid rhetoric, in parts almost dramatic in character." It was "one of the most striking and effective ever delivered in Cincinnati." Among other curious things, he said that there were now in London Indian societies composed of native scholars, Brahmins, an able Confucian priest, a liberal descendant of Mohammed, and a learned Hindoo author. Mr. Conway had gained much of the material for his lecture from these persons.

—The representatives of the English board and stockholders of the Erie Railroad who were deputed to examine into its condition and prospects have made their report. It is not assuring in a financial sense, but commends in flattering terms the present management of that great property. It must be very gratifying to Mr. Jewett, who has inaugurated the present economic management, to receive such commendation, and he is to be congratulated upon the success which has so far marked his endeavors.

—The twenty-first anniversary of the founding of Woodward College was celebrated October 21 at Cincinnati, Ohio. The college has ceased to exist, but the members of "the old Woodward Club" meet every year for a grand jollification and the renewal of old associations. The festivities this year, as usual, included games of foot-ball, in which the "old boys" took part with all the zest and pluck, if not all the agility, of their earlier days. Judges, lawyers, editors, merchants, physicians, and professors lay aside their dignity and become boys once more while they urge the flying ball. This year the games are said to have been very lively. It took the "old boys" some time to warm up and get their muscles into play, but once fairly at work, they entered gayly into the sport. There was a banquet in the evening, after which Mr. Charles Nordhoff delivered an address to the members of the club and their guests. It was full of pleasant reminiscences of the old school, its teachers, and its pupils, and contained some excellent suggestions on the subject of school education.

—Mr. Charles Lanman, author of the *Dictionary of Congress*, has now nearly ready for the press a work entitled *Biographical Annals of the Civil Government of the United States during its First Century*. This work will contain about seven thousand biographical sketches, and eight thousand additional names of persons who have been connected with the government since the signing of the Declaration of Independence. It will embrace in its scope the Delegates, Representatives, and Senators who have served in the Continental and Federal Congresses, the Federal and State judiciary, ministers to foreign countries, executive officers in all the departments of the nation, as well as all the Governors of the States and Territories, together with a very large amount of tabular information, gathered from official sources, calculated to illustrate the growth and present condition of the government of the United States.

—There is an air of simplicity and accuracy about the following, from the Chicago *Times*, that renders its reproduction proper: "The other day Mr. Bowles went to church in Springfield, Massachusetts, and feeling the effects of his severe editorial labors through the week, went to napping. By-and-by he was awakened by the preacher, who struck the desk and shouted, 'Who shall be able to stand up in the presence of the Lord on that awful day?' And Mr. Bowles, rising in his pew, remarked, 'Charles Francis Adams is the only man that can do it, and I nominate him for the position.'"

—Among the many curious stories told of Mr. Gladstone the following is the latest and most characteristic: About a fortnight ago he went to a second-hand bookseller and bargained for the sale of his whole library, which was cleared accordingly, including books one would think nobody in his senses would dream of parting with—presentation copies, dedication copies, copies filled with his own manuscript notes (Maguire's *Irish in America* notably so), and *all* the copies containing his own book plate. The day after, down rushes his relative, Lord Wolverton, and says he must buy up all the books sold by Mr. Gladstone. Wonderful to tell in an age so sordid as this, and of the craftiest of all crafts in buying in the cheapest and selling in the dearest of markets, the bookseller made nothing of his rare opportunity, but sold back again at the smallest trade commission. Lord Palmerston used to say that Mr. Gladstone would die either in a Roman Catholic monastery or in a mad-house. At the recent sale of his china a bidder objected that one of the vases was cracked. "And so is the owner," said a by-stander.

—Curiously enough, a most interesting reminiscence of William Pitt has just come to light in London through the fascinating pursuit of book collecting. At a recent auction sale by Sotheby & Wilkinson an old and useless book was sold. The new purchaser was fortunate enough to discover therein three old letters connected with the history of one of England's greatest statesmen. Pitt was once, it is well known, in such great difficulties that he accepted a thousand pounds to save his library from going into the hands of the bailiffs. The friend from whom he accepted the money was a man whom he had made and loaded with public honors. Pitt understood that the money was a gift; but after his death the friend made a claim for the sum, and received it from Pitt's representatives, who, though they knew that there were in existence certain letters which might have defeated the claim, could not lay their hands upon them. These letters, three in number, have now come to light, and show that the money was really a gift, and that no claim for it on Pitt's heirs and successors should have been made.

DOMESTIC INTELLIGENCE.

The business portion of Virginia City, Nevada, was destroyed by fire October 26. The flames first broke out at daylight in a dwelling on A Street, near Taylor, a point in the southwestern limit of the business and thickly settled portion of the city. It spread rapidly, extending eastward toward the ravine in which are situated works and mills and several prominent mines, and reaching as far as F Street northward, the flames crossed Union and Sutton streets, covering a space of about ten blocks, comprising, in the words of one dispatch, "almost every decent building in the town." As the fire worked up C Street the offices of the *Territorial Enterprise* and *Chronicle* were destroyed. Piper's Opera-house was the next in flames, and it became evident that the railroad dépôt and the hoisting-works of the Consolidated Virginia were in danger. The water supply was inadequate and the engines of little use, so recourse was had to blowing up buildings. The total loss is estimated at $7,500,000, on which there is not more than $2,000,000 insurance. Fully 3000 persons were rendered homeless and destitute.

President Grant has proclaimed Thursday, the 25th inst., a day of national thanksgiving.

The official returns of the Ohio election for the leading places are as follows: Governor—Hayes, 297,813; Allen, 292,264: Hayes's majority, 5549. Lieutenant-Governor—Young, 297,931; Cary, 287,968: Young's majority, 9963. Auditor of State—Williams, 296,201; Green, 292,271: Williams's majority, 3930. Treasurer of State—Milliken, 296,677; Schreiner, 292,714: Milliken's majority, 3963. Attorney-General—Little, 296,858; Powell, 292,487: Little's majority, 4371. The Prohibition vote on Governor was 2591. The highest Prohibition vote was on the Lieutenant-Governor, 3630.

Dr. Amasa Walker, the well-known writer on political economy, died suddenly at North Brookfield, Massachusetts, October 29, aged seventy-six years.

FOREIGN NEWS.

The cattle disease still prevails in England and Wales, but is gradually falling off. A leading English agricultural paper reports the number of cases for the quarter ending October 16, as follows: In Somersetshire, 83,000; in Cheshire, 50,000; in Dorsetshire, 48,000; in Gloucestershire, 44,000; in Oxfordshire, 39,000; in Warwickshire, 33,000; in Norfolk, 31,000; in Cumberland, 23,000. Throughout England and Wales there were for the same time over 500,000 cases. The money damage is estimated at $1,000,000.

The river Trent overflowed its banks in the county of Lincoln on the night of October 24, washing away the railways and doing great damage otherwise. At Nottingham thirteen persons perished, and at Burton-on-Trent, six.

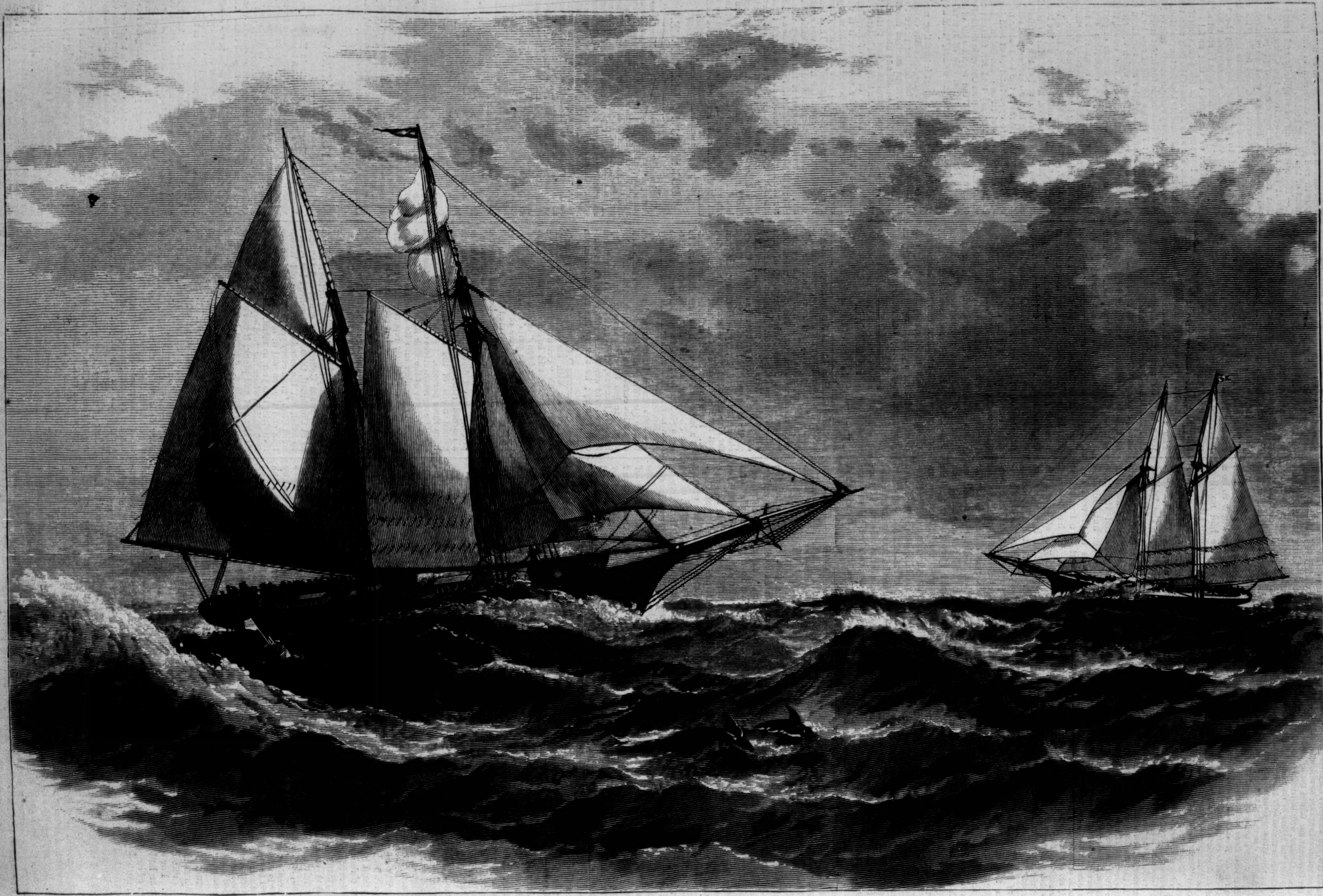
The German Parliament met October 27. The Emperor William, being indisposed, did not attend, the imperial speech being read by Herr Delbruck, Minister of State. His Majesty says, "So far as human judgment can discern, peace is more assured now than at any time during the twenty years preceding the reconstruction of the empire."

The council of physicians acting in behalf of the Prussian Supreme Court has declared that Count von Arnim is unable to bear the prolonged imprisonment to which he has been sentenced.

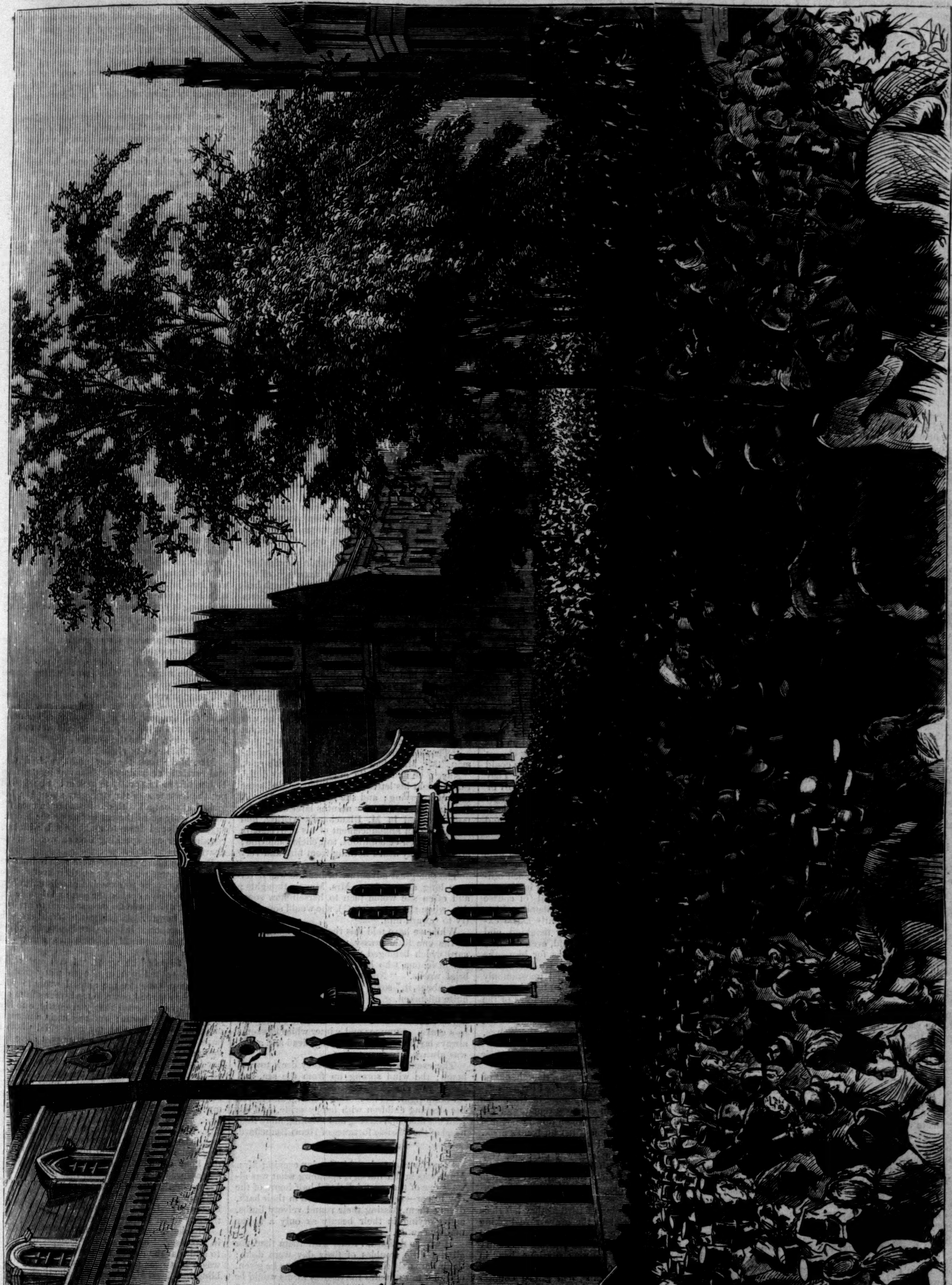
Advices from Central Asia state that the insurrection in Khokan has been renewed, and the new Khan has fled to Khojend.

It is rumored that the Carlist General Dorregaray has been shot by order of Don Carlos.

The St. Petersburg *Official Gazette*, speaking of the condition of affairs in Herzegovina, uses this significant language: "In view of the popular distrust of Turkish promises of reform, steps must be taken by foreign cabinets to strengthen confidence so as to enable the Porte to fulfill its promises. The present sad condition of the Christians must be put an end to in any case."



THE OCEAN YACHT RACE—THE "MOHAWK" ROUNDING THE BUOY TWENTY MILES TO WINDWARD OF THE SANDY HOOK LIGHT-SHIP, ON THE HOME-STRETCH.—[See Page 923.]



THE REVIVALISTS IN BROOKLYN.—THE CROWD BEFORE THE RINK IN CLERMONT AVENUE.—[See Page 918.]

THE REVIVALISTS IN BROOKLYN.

Messrs. Moody and Sankey, the revivalists, as mentioned last week, began their work at the Brooklyn Rink on Sunday, October 24. The building will seat, it is said, five thousand persons. By half past six o'clock in the morning the space in front of it began to fill, and before the hour of service, half past eight o'clock, the crowd filled the entire block from Willoughby to Myrtle Avenue, as shown in our illustration on page 917. When the doors were opened there was much scrambling for entrance, and the seats were almost instantly occupied, leaving several thousand persons outside. The city railroads continued bringing people long after all available space in the Rink was occupied. Great as was the throng in the morning, in the afternoon it was still greater. The immense crowd was orderly and well-behaved, but the pressure from the outside was so great, simply from the weight of numbers, that the policemen were unable to keep the steps of the Rink clear, and there was, in consequence, a great deal of pushing and confusion at the door. Several ladies fainted from terror, and were carried into the Rink in an insensible condition, as it was impossible to take them through the crowd. The day was exceptionally fine, and large numbers of people were present out of mere curiosity. The number of persons present within and without the building was estimated at twelve thousand and upward. To accommodate the great concourse of people, the Simpson Methodist Episcopal Church, near by, was thrown open, and religious services were conducted there by the Rev. Dr. Cuyler.

It may be said, without exaggeration, that Mr. Moody at once took possession of his audience. Though not magnetic, his intense earnestness impresses every hearer, while the directness of his appeal and the aptness of his homely illustrations insure the closest attention. Mr. Sankey's singing has fully met expectation, great as the expectation was. During the rendering of his pieces the vast congregation sit spell-bound. His voice is described "as a marvel of sweetness, flexibility, and strength."

On Monday morning the evangelists began with an early morning prayer-meeting in the Brooklyn Tabernacle (Dr. Talmage's), which was filled; in the evening the Rink was filled again. By Wednesday the crowds had grown so great that both the Tabernacle and the Lay College were filled at the hour of morning prayer-meeting. At the evening service both the Rink and the Simpson Church were filled, and many hundreds were compelled to remain outside. A young men's meeting was also held in the Reformed Church opposite the Rink. The worshipers represent both the church-going and the non-church-going classes of the community.

CHANCE FRIENDS.

I.

Some seven years ago, one sunny summer day, the people of Crossley station stood waiting about for the down train from Mistford.

Among them were a young couple who had driven to the station in a pretty little brougham half an hour before. Their servant had bidden them good-by with smiles of congratulation, and had started off home again in a hurry to join the festivities he knew were going on at the country rectory where the wedding had that morning been held.

Bride and bridegroom were left, vainly endeavoring to look like an old married pair, while their secret was, of course, patent to all observers from the intense newness of their traveling equipage and their ill-concealed shy happiness.

The porters knew the facts of the case perfectly well, and looked knowingly at each other, insisting on officiously taking possession of their luggage, with an eye to unusual gratuities; and one of them ostentatiously held a big board with "Engaged" emblazoned thereon, ready to hook it on a compartment as soon as the train shrieking in the distance should reach the platform.

"Late!" shouted the station-master, coming out of his room with his watch in his hand. "Ring up, and look sharp," he added, as the one omnibus of Crossley came rattling into the station yard, and a brace of porters rushed off to secure the passengers and their goods.

The bridegroom resigned his wife's dressing-case into her own hands, and went in a hurry to get their tickets. Of course he might as well have had them some minutes before; but being in the happy state of mind peculiar to his position, he happened to forget that tickets were even necessary till the last moment. His newly made wife, too, was no more on the alert than he was; she stood where he left her, half dreaming, I believe, and entirely oblivious of where she was, almost wondering who she was.

She was a pretty, fair young woman of two or three and twenty, dressed with good taste and in a manner becoming a clergyman's daughter and a clergyman's wife, for the change in her life was as little as could be in some ways; she was only going from—being daughter—one rectory to be mistress of another.

Still it was a change, and as wonderful to her as it has seemed and forever will seem to every bride that's ever wed, and there is small reason to wonder that she should be so far wrapped in day-dreams as to start when the great bell set out ringing close beside her, and a voice shouted, "Other side for the down train." She was startled and frightened, and without thinking of what she was doing, sprang down two or three awkward steps, burdened as she was with sunshade and dressing-case, and essayed to cross the rails.

"Cross by the bridge, miss!" shouted a porter. "Come back; there's no steps that side!" cried out some one else. "And make haste, ma'am; you can get over by the bridge," roared some one else. And Mrs. Maye, flurried and scarce knowing what she did, ran back across the rails, dropped her sun-shade, stooped to pick it up, and as she rose up again saw, in a sort of confused way, her husband's face of horror as he appeared at the door of the booking office, and heard a cry of alarm from the people on the platform, mingled with a rushing sound close behind her. A great dread came on her, though she did not know her actual danger. She made one spring toward the platform, and fainted as a strong man's arm grasped her round the waist and dragged her, insensible but safe, from before the crushing monster that came up at the moment. She knew nothing of the hubbub that followed, recovering consciousness only as the train was moving off.

Her first look was for her husband, who came hurrying into the room where she had been carried just as she opened her eyes.

He had been shaking the hand of one of the passengers who had just left in the departing train, telling the black-mustached foreigner, whose strength and presence of mind had saved his wife, that never could he thank him, never could he repay him, enough for what he had done. He broke down in the midst of what he would have said, and finding only words enough to ask the young Frenchman's address, wrung his hand again as it was stretched to him out of a second-class carriage, and sped back to his wife, newly won and nearly lost.

"Good sakes alive!" said a fat, kind-hearted country-woman, in a state of great heat and excitement, who was attending to the bride. "My heart, but you was nearly gone! If the black-faced gentleman" (equivocal!) "hadn't 'a kep hold on yer fast, miss, you'd not have been here now. But there, take some more water, my dear," holding some of the tepid liquid usually found in a railway waiting-room to the pale lips, "and hold up a bit; the young parson look like a sheet, he do!" This she added as Mr. Maye came into the room, looking indeed almost as white as his wife.

He got her out into the air after they had shaken hands with the market-woman, and thanked her for her kindness so heartily that she too was somewhat overcome, and uttered blessings on their heads sufficient to keep them happy through a long life; and when the porters and the station-master and his wife and children and the few lookers-on had left them to themselves again, they set themselves to plan where they were to go, as their original destination could not be reached that evening.

So on their journey the next train bore them safely away, and the morning's peril thenceforth was a thing only to be remembered with exceeding thankfulness for the escape therefrom

II.

Time passed on, and in the village of Stanway our bride had long since settled down into quiet matronhood.

They were well liked, both she and her husband. Her work was just that of an ordinary country parson's wife: club, schools, poor people who were ill, little babies just entered on this life, old folks just going out of it, singing classes and sewing classes, took up all the time she could spare from her home and her children. They had two of their own, a little gray-eyed girl of six and a fat pretty boy of half his sister's age. Delicious little things they were both, or at least so thought and frankly said their mother; and in this, as in most other things, she and her husband were of the same mind.

I think their marriage was happier than nine out of ten, though that, I hope, is placing it on a somewhat high scale. They shared each other's work heartily, he taking as much interest as was possible to his masculine mind (of course superior to any woman's) in the details of her parish work; she listening devoutly as he expounded his plans for benefiting mankind, and sharing his labors when she could, even down to writing the ends of his sermons for him—the "finally" *was* such a nuisance. He had a trick of saying all he had to say, and uncommonly well he generally said it; but then he was apt to pull up all in a hurry, to the discomfiture of the weak-minded, *i. e.*, the methodistical, members of his congregation, who had not patience or wit to take the matter of his sermons to themselves, but pined for a good long "personal application" and a dose of denunciation of evil-doers—their neighbors, of course—at the conclusion.

They did not get much of that, though, out of Mrs. Maye; but she often contrived to (her husband said) spoil a most uncompromisingly sensible sermon by the addition of a few remarks of her own, which, as it were, let them down easy, and pleased the softer portion of her husband's flock.

And so they worked and lived on together, very happy, though a long way off being very rich, and shared with a good many of their neighbors means which some in their station would have considered insufficient for themselves.

One August evening of 1870 as they left their church they stopped in the grave-yard looking at the quiet scene around. They often stayed their steps just there, and the peaceful country picture, bright with morning sunshine, hazy in the tender twilight, or spread out clear and cold under silvery moonbeams, had grown familiar and very dear to them.

"I liked your sermon so!" said Mrs. Maye, as they paced round by the path where they could stand and look out toward the sea-line joining the horizon. "It seemed to me that if all those poor people fighting yonder across the water could have heard you, they would have hated their work, and clamored for peace at any price."

"That shows how little you understand any thing of the feeling that keeps the war going," replied Mr. Maye, pleased nevertheless with his wife's praise, for that sermon had been all his own. "But woman is an unreasoning animal, and the world would be queerly governed if matters were much directed by her will."

"A blow for a kiss," said his wife, smiling. "I did not think when I praised your sermon it would lead to your making invidious remarks on my sex. But, Philip, what should we do if this war fever spread across the Channel? Fancy any one invading us and burning down our house and spoiling the church! And oh, Philip, if they hurt Nellie and Bob!"

"Let's hope you will never have to do more than fancy such horrors," said the parson; and then, planting one foot upon a stile, he went off into a long dissertation on the causes of wars in general and this war in particular. It sometimes happened that his wife could not listen closely to these long speeches of his, however well worth hearing they might be. Occasionally her thoughts had a trick of going off in the opposite direction, and this particular evening she broke in upon his words with the question,

"Have you asked Mr. Roberts lately about M. Blanchard?"

For an instant her husband looked put out, but he bore the interruption with good grace, and answered no, that he had not seen Roberts lately; and when he last saw him he had been unable to give him Blanchard's address, nor could he tell them whether their friend was taking his part in the fighting.

"I hope he's not," said Mrs. Maye. "He saved my life; and though we have never seen him since our wedding-day, he always seems to me like a well-known friend, and I can't bear to think of his being in the midst of such horrors."

"Most likely he is, though," said Mr. Maye. "There are not many Frenchmen of his age who will escape them. It's strange he never answered my last letter; but then we had nothing to write about except our unceasing gratitude to him, and perhaps he grew tired of many words and no deeds, for we never had an opportunity of serving him."

And so once more their minds went back to the great escape of their wedding morning. It was so distant and so like a bit out of a book by this time, and the fact of their never again having met Mrs. Maye's preserver seemed to make the incident so much more unreal, that they could afford almost to laugh over what might have been such a tragedy.

By a strange chance they met in a neighboring clergyman a connection by marriage of the Frenchman whose timely nerve and strength had saved Mrs. Maye, and through this Mr. Roberts they learned from time to time of their friend.

They had written often to him, but he had never been able to accept their invitations to Stanway, for he was by no means so fixed that he could take his pleasure at will. He was only a clerk in some banking house in Paris; and though he had risen in position and salary too during the last seven years, he had found other ways of disposing of his surplus income than by visits to England. He told them in one letter (that was written five years before) that he was very lonely, for he had none but very distant relatives living, and his life was a dull one.

"That's a strange admission for a Frenchman," Mr. Maye had said. And his wife said, "Nay, if he had no wife, of course he was dull." *She* thought his letter signified that he had some idea of marrying; and she was quite right. A Parisian journal of a few months later arrived by post, directed in M. Blanchard's writing, and containing an announcement of his marriage, in the list of such celebrations, to Félicie Luneville; after that they heard nothing from him and very little of him.

The one great adventure of her life was never very long absent from Mrs. Maye's thoughts; and often she would plan to herself how some day, when she grew rich (!), she would somehow try to reward him.

While we have told this their steps had turned to the one little grassy mound in the church-yard which belonged to them, under which lay the little one who had been theirs only a few brief weeks. "Not long enough for them to care about it," some folks said; but they were quite mistaken.

The mother of "Amy Maye, aged two months," never went home without a moment by her baby's grave. Summer and winter white blossoms always lay thereon. Her darling, dead and gone, was always very dear to her.

The evening grew chilly as they drew toward home; the wind sprang up from the sea, and they gladly closed themselves in with the cheerful lamp-light. The mother went up and kissed her sleeping children with happy pride, and sat with her husband, talking and thinking more than usual of the possible fortunes of Henri Blanchard.

III.

Some fortnight after this Sunday evening Mrs. Maye was in her nursery, spending what was always one of the most delightful half hours of the day to her—watching her children in their bath, drying them, kissing their round velvety limbs, and glorying in their beauty as only a happy mother can do.

It was so delightful to be with them then, for all the little troubles of their day were done; there were only the good-night kisses to be given, and in a few minutes the restless forms would be quietly sleeping in all the thousand charms of their innocent childhood. If they had been cross, nurse forgave them when she was just going to be rid of them for the long night. It was an hour of universal satisfaction and comfort to the whole household when the children, darlings and plagues, went off to bed.

Their father even had come into the nursery, and had been beguiled into carrying his boy into the bedroom; the mother followed, with her great girl clasping her round the neck, and nurse brought up the rear; when, just as they were crossing the landing at the top of the stairs, the sound of wheels was heard coming up the drive, and a loud ring followed at the door-bell.

The whole procession stopped, and betrayed a common anxiety to know who or what could have arrived.

Jane, opening the door, was heard uttering words of expostulation with some man without; and then an appealing glance from her to her master, visible at the turn of the balusters, was answered by his running down to see what could the matter be.

Outside the door was a large covered cart, commonly called "Weaver's," from the name of its owner, the one-legged carrier, who stood talking very broad Essex, and doing his best to explain how he found the parcel he brought "awaitin' for he at the Weathertree station."

"The man at the office he out wi' this here, and he say, 'Here,' he say, 'Dick, here be a live parcel for yer for to take to the parson yonder down at Stanway.' Says I, 'Why, ter baint for he sure*ly*.' Says he, 'Just you read what they've writ;' and there ter be, Sir, as plain as plenty of ink can make it. So then I couldn't but bring it; and here ye are, Sir. And most uncommon good she've bin; never cried nor spoke scarce, except when she see some ducks go waddling along the road. Now then, my pretty, come along."

And with these words he lifted out and handed over to the astonished and bewildered Mr. Maye a pretty little child of four years or thereabouts, dressed in the deepest mourning, with a big ticket sewed upon the front of her dress, on which was written: "To the Reverend Mr. Maye, the Minister of the village of Stanway by Weathertree.—To the servants at the Weathertree 'terminus:' Please do the favor to send this little child to the house of the minister so named."

It's no use attempting to express what Mr. Maye's feelings were when Weaver politely lifted the little maid up into his arms, where she rested quite comfortably and without the slightest symptom of shyness. The bewildered clergyman felt fit to drop his light burden to the ground, and looked so thoroughly puzzled that Weaver felt bound to enlighten him without questioning, as far as he was able, and told *him* how the porter had told *he* that the guard of the down train had taken charge of the child at the Bishopsgate station that afternoon, and the people who gave her to him seemed foreign like; which information being heard by Mrs. Maye, who had joined her husband by this time, she with her quicker woman's wit instantly jumped to the right conclusion, and solved the mystery by exclaiming,

"This must be M. Blanchard's child."

And so it was, as an inspection of the one small leather-covered box which Weaver just then dragged forth from his cart quickly proved, for it bore the name of "Blanchard" written above Mr. Maye's own address.

The moment the child saw the box she unfastened her arms from round her new nurse's neck, and dragged out of the bosom of her frock a ribbon and a key, which she held out to Mrs. Maye, saying, as she did so,

"Ma Fifine, si tu plais."

Mrs. Maye took the key and the child too, and carried her in-doors. She was lighter than Bob to lift, and so pretty to look at! She showed not the least fear of the strangers about her, but looked at them all with dark wide-open eyes, till she suddenly spied the cat sitting on the hearth-rug, and slipped down to make friends with her, coaxing her and speaking French words of endearment.

Both the home children were safe in bed; so Jane and nurse went down on their knees before the little stranger to examine and listen to her, while Mrs. Maye opened the box and drew forth, first thing of all, a letter directed both to her husband and herself. Holding it to him, they both read it together. It bore date September 4, and was written from M. Blanchard's address in Paris.

"My friends," he wrote, "I can not make the time to tell you of the so many changes which have come to me since I wrote to you. It has been made known to me by news from my cousin [Mrs. Roberts] that you continue to live in your country home; and to you, in a moment of peril, I dare to send my own child whom I have so cherished. It is a year past since her mother is dead. No time, no words, can tell of her loss. My little one has been by my side at all times. She is to me the most dear, the most beloved. But now at this hour I must not keep her with me when my country claims my time, my thoughts, and my life if so it pleases Heaven. I dare not keep my child in this unhappy city. No friends I have in the care of whom it would be possible to place her. Will you take her, and in your peaceful home keep her until the hour when these terrors shall be past? I feel assured that madam will love my child, who has no mother; and for the care which my heart tells me you will have for her, may the good God bless you! How will each moment be long until the day when I shall see her again!"

The letter was concluded in haste, and only in a postscript had the writer bethought himself to add that the child's name was Aimée. There was a blot over that which brought tears trembling into Mrs. Maye's eyes, as she thought with sorrowful sympathy of the wifeless man sending his one darling forth among strangers to seek for safety away from him.

"Aimée" too! Why, was it not as if this little foreigner came in her own lost Amy's place? Be good to her and cherish her? Ah, that she would, even as she would hope and pray for some one to do the same for her children if ever she had to leave them.

So, putting off discussion on this strange addition to their family till a later hour, she took the French child on her knee, and calling back all the school-taught French that she could remember, the two talked on, and began to learn the easy task of loving each other. "Fifine," the big doll, was brought forth and her perfections pointed out, till suddenly, when Mrs. Maye incautiously asked who gave her Fifine, the little one began to cry, and said, with a burst of grief, that "Oh, her dear papa had given her the doll; and, oh, papa, papa, how she wanted him! and would he never come?"

When a child cries for what one can give it, it is bad enough; but when it cries for something impossible to be obtained, and expresses its grief, moreover, in a foreign language, the case is worse. Mr. Maye and the servants were greatly distressed; but Mrs. Maye, remembering that the poor little thing was hungry and tired, gave her some supper and soothed her and petted her, putting her to sleep at last in one of Katie's night-gowns (M. Blanchard had forgotten night-gowns in his hurried packing up) by Katie's side; and in a few minutes Aimée's troubles were happily forgotten.

The morning's waking was a thing to be remembered, the little bedfellows' delight in each other was so charming. From the moment when Katie, awaking early, saw and felt a little brown-haired stranger sharing her pillow, and the other, sympathetically opening her eyes, met the astonished gaze of the rosy English child, and each began talking in a tongue unknown to the other, till at length they interchanged kisses quite naturally and patted each other's cheeks—from that first moment they were fast friends, and Bobbie took to Aimée as naturally as if she had been his twin sister.

Later in that day, when the strangeness of seeing her with them had somewhat worn off, Mr. Maye said to his wife:

"Do you remember wishing not long ago that you could repay poor Blanchard for what he did for us? You have the chance now, have you not?"

They had the chance, and well they used it. Aimée was soon as dear to Mrs. Maye as one not her very own could ever be. Her natural prettiness was very attractive, but her delight in young companions, such as she had never had before, made her doubly charming, while Katie's motherly air of protection and attempts to teach her new friend to speak English were delightfully droll. Before Aimée had been with them a week there was not one in the house who would not have sorely lamented the loss of the bright little thing; and long before the winter set in she was as much one of the household as if she had been born under the roof. Some of Aimée's doings seemed strangely touching to her English friends; her young heart was so faithful to her father even among the kind faces that surrounded her. She would carefully put away a picture, or a book, or any thing that especially pleased her, concealing it, as she fondly imagined, in some place unknown to any one but herself.

Jane called her mistress one day to look at a queer collection of things she had just found under a chest of drawers in the nursery. Wrapped in an old newspaper were three halves of oranges, ditto figs, half a mince-pie, some shrimps (frightfully stale, of course), some bright Christmas cards, and half a herring—all things which little Aimée had highly approved of in their different ways, and which she had contrived to hide unnoticed.

From the nature of this treasure, Mrs. Maye could not possibly allow it to remain where found, and yet she felt sorry when she saw the child's look of dismay at the discovery, and heard her exclamation, "For my good farjer dey was!" followed by a fit of grievous unreasoning childish sorrow.

After soothing her, Mrs. Maye did as she would have done with her own children—put her to bed for an hour's rest, and left her to sleep off her trouble. In an hour's time, however, when she returned to the room, she found the bed empty, and looking round in some alarm, saw Aimée kneeling on the floor in a corner, while before her she had placed a pillow covered with an old green shawl; upon this lay two brushes crossed over each other, and some flowers she had used to dress her doll with twisted into a little straggling wreath.

For a moment Mrs. Maye was at a loss to understand all this, till Aimée, catching sight of her, burst out crying afresh, and sobbed forth, "It is there is ma chère maman;" and putting her head on the pillow, which she had arranged as nearly as she could like her mother's grave, wept and refused to be comforted.

That was nearly at Christmas-time, and save one short letter in the middle of September, nothing had been heard from her father. Up to that time her life among them had been like a happy visit to the child, and she of course had known nothing of the fears and anxiety to which she would have been prey had she been a few years older. To Mrs. Maye (taught by experience that her first plan was not a good one) she took all the chief treasures which fell in her way, to be saved by her till the happy moment when her father should come to receive them. Every day some plan was made and discussed for speedily meeting him; every night her tender imperfect prayers were offered for him; each morning found her asking, "Will not he come this day?" So far as taking good care of her went, Mrs. Maye's heart was in her work; and so far as one woman can be mother to another one's children, she was as a mother to Aimée. But at last, even with such good friends around her, the little one grew wistful in her questioning, and often seemed to Mrs. Maye to ask her with her eyes that which she grew weary of asking with her lips. She was a gentle, patient little thing, and seldom grew fretful with the other children, even as she grew more still and less inclined to share their merry games.

"Mother, where is Aimée's father? He's very cruel not to come and see her," said Katie one day; and Katie's mother, with hopefulness she scarcely felt, said perhaps he would come very soon.

And so the time wore on, till toward the end of January came those anxious days when people were waiting, dreading, and hoping for news from Paris. Mrs. Maye watched and read every paper that came into her hands; looked down that strange column of touching messages which appeared daily, hoping perchance for some tidings of or from their friend; but no word from him ever appeared.

Then came the 28th and the news of the capitulation, which every one throughout the length and breadth of the land received with a long-drawn breath of satisfaction. Then another week and another of expectation, of waiting for letters, of something like heart-ache at the constant question, "Will not he come?"

Through February they passed, and still no news. Mrs. Maye grew almost unbearably anxious, and her husband, too, seemed, if possible, kinder to the little maid than ever, and when she asked for her father, would take her on his knee most tenderly.

She loved them all, but, oh! she wanted *him*. No child who had shared the love of many in a wide home circle could have remembered one dear face, and longed for the sight of it and the sound of the old familiar voice, as did this little foreigner, who had never owned brothers or sisters, who had known of her mother so little before she lost her, to whom that father had been friend and nurse and playfellow.

So Aimée's roses faded from her cheeks, and her great eyes filled with tears sometimes, when she would suddenly break off in her playing. She ceased, too, bringing or saving any of her toys for her father, but it was not because she was forgetting him. On the second Sunday in March Aimée and Katie went hand in hand to church, and, as their custom was, sat one on each side of Mrs. Maye, by the harmonium.

The service was too long, as all our morning services are, for young children, and, moreover, very uninteresting to the foreign child, who could scarcely catch a word familiar to her. The music delighted her, but when that was over and Mr. Maye preaching, her attention slackened, and her weary little head drooped on Mrs. Maye's shoulder.

She, looking lovingly on the little pale face and gathering the slight figure closer to her side, sat wondering whether the father's arms would ever clasp his child again, and, spite of her desire to listen to the sermon, her mind perversely occupied itself with conjecturing as to M. Blanchard's fate.

The sudden lifting of two or three heads among her choir who sat to the right drew her attention, and she could see that their gaze was directed toward one of the windows near.

Leaning a little forward to see if possible what attracted their notice, she saw, standing by the window, but outside in the church-yard, the figure of a man, tall, but leaning as if for support on the iron railings of a tomb. His face was so ghastly pale that he seemed almost fainting; his features, imperfectly as she could see them, were unknown to her.

Not so to Aimée, though!

The child awoke as Mrs. Maye softly drew back, and opening her eyes looked straight out of the window; then, with a sudden spring down from her raised seat, she almost screamed out, "Mon père! mon père!" and pushing open the door with all her childish force, darted out of the church. Mrs. Maye followed, and the sermon, fortunately near its conclusion, was hurriedly ended.

Every eye turned toward the window, where could be seen the child in her father's passionate embrace. Few who saw the intense joy of their meeting will ever forget it. The man, worn and enfeebled by long illness and privation, wept over his darling as the weakest woman would have done; while she, absolutely radiant with delight, brimming over with joy, held to him, caressed him, restored in a moment to perfect contentment.

His tale, as he told it to their friends that evening, when the day's work was done and his own hands had put his tired child to bed, was much the same as that of hundreds more had been in the beleaguered city; his sufferings had been no greater and his work no harder than he could easily have borne had there not been always with him an overwhelming craving to see his child—to have her with him.

Till he sent her away he did not know how he should long after her, nor how ill he could spare his girl companion.

Then after doing as best he could the duty before him all those long weeks, sharing his food with others weaker or poorer than himself, doing the most wearisome part of a soldier's work, knowing all the time what the end must be—then, when that end came, and when at last he was free to go forth and seek his child once more, he was stricken down with fever, and for another month lay almost unconscious, doing battle for his life.

But there, thank God, his troubles were over now, and he had come to claim his own, pouring out thanks and blessings on the hearts and home that had sheltered her, with expressions so warm, so overflowing, that no Englishman could ever have uttered them, however much he might have felt.

And there he still is, staying with these English friends till the quiet life and sweet spring days shall have brought back to him his wasted strength. They make many plans for the future; foremost and favorite is one which shall keep him in England, and give Aimée much to the tender care of Mrs. Maye; for it would seem a pity to break off the friendship begun by such a strange chance years ago, cemented so lately by the fortunes of war.

RELIGIOUS INTELLIGENCE.

Calendar.

NOVEMBER.

Sunday,	21.—Twenty-sixth Sunday after Trinity.
Sunday,	28.—First Sunday in Advent.
Tuesday,	30.—St. Andrew.

DECEMBER.

Sunday,	5.—Second Sunday in Advent.
Sunday,	12.—Third Sunday in Advent.
Sunday,	19.—Fourth Sunday in Advent.
Tuesday,	21.—St. Thomas.
Saturday,	25.—Christmas.
Sunday,	26.—First Sunday after Christmas—St. Stephen.
Monday,	27.—St. John the Evangelist.
Tuesday,	28.—Holy Innocents.

The question of reading the Bible in the Connecticut public schools has come to a lively climax in Newtown, Fairfield County, in that State. The Roman Catholic priest of the parish, Father M'Cartin, objected to the use of the book, but the local Board of School Visitors decided against him, and directed the continuance of the custom. Father M'Cartin accordingly entered the largest public school in the place one morning recently during the reading of the Bible at the opening of the session, and ordered the Catholic scholars to take up their studies and pay no attention to the reading. He was summarily ejected by the teacher, and the consequence of the proceeding has been the outbreak of a very bitter religious feud in the town.

A paragraph in relation to the religious faith of the members of the royal family of England shows a remarkable breadth of Church relationship. The Queen is the head of the Anglican Church in England and of the Presbyterian Church in Scotland; the Princess of Germany is a Lutheran, the Marquis of Lorne a Presbyterian, the Duchess of Edinburgh a Greek Catholic; the Prince of Wales is said to have High-Church leanings, while his wife adheres to the Lutheran faith.

The cable reports that a royal decree has been promulgated in Bavaria which gives effect to the imperial laws enforcing civil marriage. This is bad news to the ultramontanes. They have used their majority of two in the Chamber of Deputies to put out the old officers, and have demanded the resignation of the King's present ministry. There are no moderates in the Chamber of Deputies. The line between the ultramontanes and liberals is rigorously drawn, and neither party will give or accept quarter. The King has dismissed the Chamber, but will call it together again during the winter.

The American Missionary Association held its annual meeting this year in Middletown, Connecticut. Its missions are principally among the freedmen, Chinese, and Indians in the United States. The receipts during the year from all sources were $273,533; expenditures, $290,335: the treasury is in debt $96,559. The number of missionaries is 62; of teachers, 189; the number of churches, 65; of church members, 4222. The scholars taught in the South by former pupils aggregate 64,000.

A correspondent of *Zion's Herald* has visited the room occupied by John Wesley when a tutor in Lincoln College, Oxford. He thus describes it: "The room is nearly square, and is about fifteen by fifteen feet in size, low studded, and as plain in all of its appointments as though another Wesley might now be in its occupation. There are one back and two front windows. A very small bedroom is connected with the room. About the back window there is trained a beautiful and thrifty grape-vine, said to have been set out by John Wesley when he occupied the room. It is very large, having a stem nearly four inches in diameter a foot from the ground. It is still vigorous, and full of fruit."

The Delaware Historical Society has prepared photographs of the old Swede's Church in Wilmington, which will be sent to King Oscar of Sweden. The church is one hundred and seventy-six years old, and is one of the best preserved relics of antiquity in the country.

The Pope has given audience to the special envoy of the Shah of Persia, General Agar, with the full honors of an embassador. The envoy, who is a Catholic, was the bearer of a letter from the Shah informing the Pope that orders had been issued to all the authorities in Persia to protect Roman Catholics in the exercise of their religion.

The latest account of the vote of the Presbyteries of the Presbyterian Church on synodical representation shows twelve Presbyteries for, and three against.

The interdict laid upon the confraternities and churches in Brazil has been raised.

Mr. Watkins, the Congregational minister who has been exposed to such great dangers in Guadalajara, is having good success. His church now numbers ninety-one members. Last July an accession of twenty was received.

The Maine Baptist State Association publishes an encouraging report of progress during the year. "The number of churches is 259, one less than last year; the number of ordained ministers, as reported by the churches, is 162; the number of students preparing for the ministry is 15, one more than last year; the baptisms for the year were 643, more than in any previous year since 1867, with the exception of one year."

During the last five years, or since the union of the two Assemblies, the Presbyterian Board of Church Erection has aided 902 congregations, securing thereby church property worth $4,550,000, and affording accommodation to 307,000 worshipers.

Some recently published facts in relation to divorce in Prussia do not speak well for the Prussians. The law requires disagreeing couples, before going into the court, to make their complaints to the parish minister. According to a paper presented to the Evangelical Church Council, as many as 7430 couples appeared in 1874 before the Protestant clergy of the eight older provinces. Of these 1282 cases occurred in Berlin alone. In 2688 instances the clergy succeeded in making peace, in 1042 the parties remained undecided what to do, while 3700 couples went to law.

The energy of the Moravians in the work of foreign Christian missions is well known. The report for the year ending July 1, 1875, shows that their missionary treasury is in an exceptionally good condition. The total collections amounted to $106,900, the disbursements to $103,500. In addition, $25,965 were gathered for the purpose of extinguishing the debt of the former year, which was $23,400. The brethren begin the new missionary year with a balance on hand of $6000. The whole number of missionaries is 336, an increase of three. There are ninety-two stations and fifteen out-stations. The number of persons under the care of the missionaries is 67,795.

The Rev. H. Chauncey Riley reports that there are in Mexico fifty-eight congregations of the "Church of Jesus," the name given to the Protestant organization of which he is the chief director. An illustration of the fanatic opposition to freedom of worship, and also of the difficulties of missionary labor in Mexico, was given in the assault made upon the Protestants worshiping at Oaxaca in an ex-Jesuit church. The mob surrounded the building, and tried to break in the doors, but were dispersed after some time by soldiers. The government is very firm in its determination to protect the Protestant ministers.

The Presbyterian Synods and Presbyteries continue to denounce the action of the last Legislature of New York in relation to the Sisterhood of Gray Nuns. The New York State Baptist Association has expressed itself in the same manner. This legislative fraud will be the reverse of profitable to its perpetrators.

The Methodists are discussing the project of appointing resident bishops for their foreign missions. A missionary in India writes to a paper at home: "We must have a superintendent if we would make the work a success. No low-caste bishop either, but one as big as the English bishops here."

The latest statistics report the death of 40,000 Feejeeans from measles during the prevalence of the late epidemic. Some of the tribes attributed the visitation to their adoption of the Christian religion, and dismissed their Christian teachers. It is said that one tribe burned the wife and children of a teacher who had died of the plague, in order thereby to arrest its spread among them. The greater number of the natives, however, have remained faithful to their Christian profession. The population of the islands has been reduced two-thirds.

The New York State Baptist Association met at Saratoga on the 28th of October. It was determined to raise $40,000 for missionary work in the State. A resolution was adopted expressing the hope that "in every State in the Union any legislative appropriation to sectarian objects or societies will be forever forbidden by constitutional amendment."

In laying the top-stone of the Lincoln Tower of Christ Church, on September 29, Mr. Newman Hall was attended by a company of twenty persons, among whom were three ladies. The top of the tower is two hundred feet from the ground. It was consecrated "to the promotion of freedom, peace, and international brotherhood." The total cost of Mr. Hall's new church will be £45,000. Its sittings will accommodate 2000 persons.

The deposed Bishop of Breslau, Dr. Förster, has renounced all connection with the Prussian part of his diocese. He retired to the Austrian portion some time since. This act will relieve both the bishop and the Prussian government.

The doubtful expedients adopted by churches and benevolent societies for the raising of money have often been made subjects of comment. The latest novelty is reported by the *Baptist Weekly*—"a tub race at a clam bake," for the benefit of a Baptist church in staid New England. The *Weekly* says, "We may hear next of a sack race, a horse race, or even a boxing match for a church benefit."

The Rock River Methodist Episcopal Conference, which has just closed its session at Joliet, presents a very fine showing of ministerial support for these troubled times. The claims of the ministers were $163,389, on which they had received $152,219. The full amount would have been still better. This Conference has the supervision of 25,500 members, who worship in 250 churches. The value of the churches is $2,018,700.

The Catholic bishops of Quebec justify priestly interference in politics, on the following grounds, which it may be useful to put on record:

> "Can a Catholic, we repeat, refuse to the Church the right to defend herself, or rather the right to defend the spiritual interests of the souls confided to her? But the Church speaks, acts, and combats by her clergy, and to deny these rights to the clergy is to deny them to the Church. The priest and the bishop may, then, in all justice, and should in conscience, raise their voice, point out the danger, and authoritatively declare that the vote on such a side is a sin, that to do such an act makes them liable to the censures of the Church. They may and should speak not only to the electors and candidates, but even to the constituted authorities, for the duty of every man who wishes to save his soul is marked out by the divine law. The Church, like a good mother, owes to her children of every rank love, and consequently spiritual vigilance. Therefore to enlighten the conscience of the faithful on all these questions which concern their salvation is not converting the pulpit of truth into a political tribune. Doubtless such questions do not arise every day; but that this right exists no one can deny. The nature of the question makes it evident that to the Church alone it belongs to determine under what circumstances she should raise her voice in favor of Christian faith and morals."

This statement repeats the old claim that the Church alone is the competent judge of human affairs.

A FUNERAL IN VENICE.

Venice is a city of silence. The animated life, the noise and bustle, so inseparable from other great cities, with their swarming thoroughfares and crowded market-places, are utterly unknown. Neither horse nor carriage nor vehicle of any kind is to be seen in its streets. It is a quiet city, free from dust and din and rattle.

The artist has chosen for the subject of the illustration on this page a funeral cortége as it passes down the Grand Canal on its way to the cemetery, situated on the island of Murano. Here the rich and poor are buried together, all consigned to one common resting-place, though the graves of the wealthy are marked by magnificent monuments, while the poor are huddled into their narrow beds, and the expenses paid by a grudging government.

A funeral in Venice, when it passes, as it often does, after twilight, with priests in white gowns, and candles flaunting a sickly yellow light upon the still water of the canal, seems to agree with the place and with the people. The sight does not shock, as it does in cities which are alive with action or with sunshine; but, like a burst of laughter at a feast, the monotonous funeral chant chimes in with the mournful habit of the place, and death seems only to be a louder echo of their life.

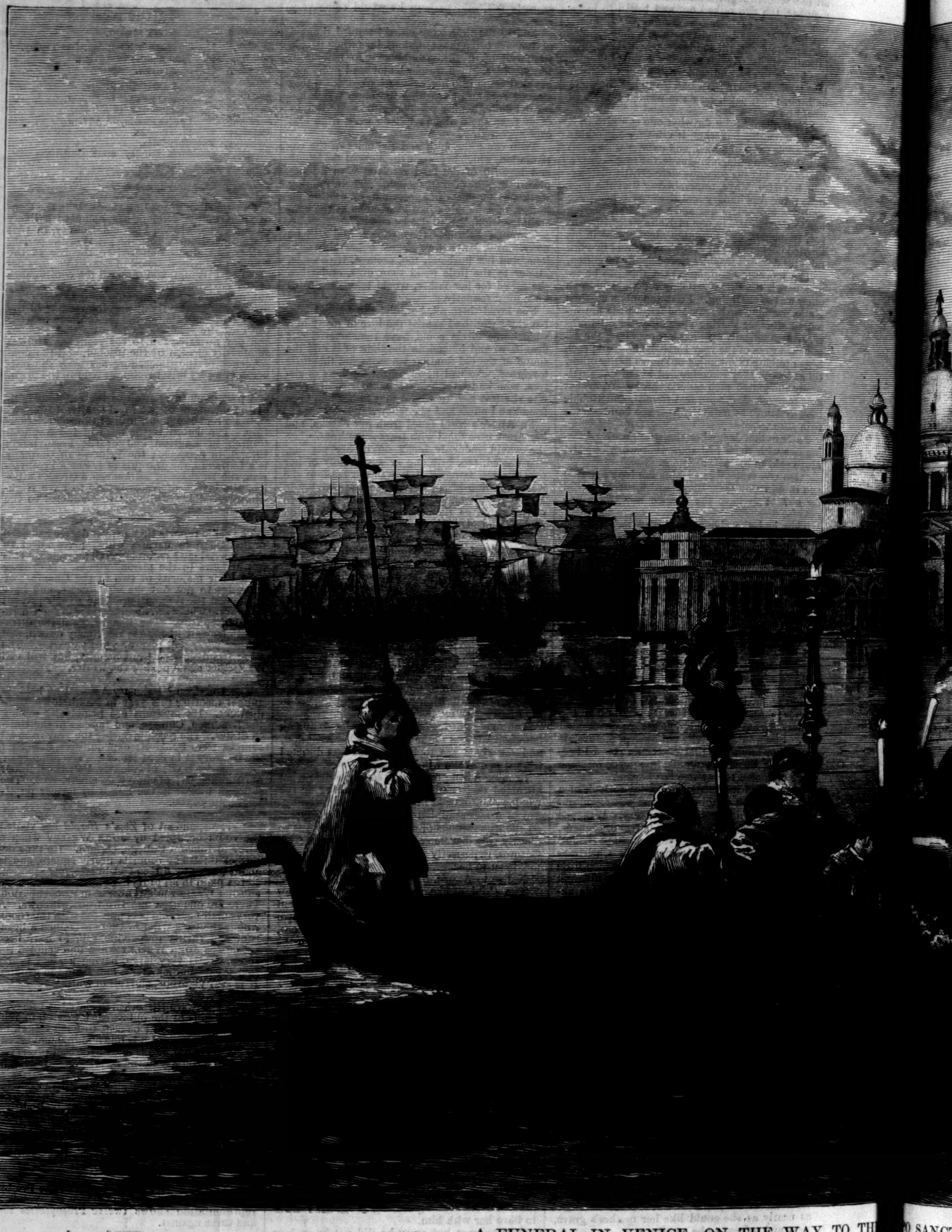
The Venetians are not a cheerful people. Even their amusements have an air of quiet, and a sadness and melancholy cling about the race, as if conscious of their former glory and importance, and mourning for their present decadence. Even the gondolas, so "like a coffin clapped in a canoe," add to the grave and solemn air of mourning that broods over the city with their funereal blackness. There is something weird and ghost-like about the movements of these tiny craft even when on pleasure bent—

"As up and down the long canals they go,
 And under the Rialto shoot along,
By night and day, all paces, swift and slow;
 And round the theatres, a sable throng,
They wait in dusky livery of woe;
 But not to them do woful things belong,
For sometimes they contain a deal of fun,
Like mourning-coaches when the funeral's
 done."

It is interesting to remember that Venice originated in an expedient of desperation, and became great by an accident of position. Were it otherwise, it would be difficult to account for the selection of so unpromising a situation. Yet Venice is a beautiful city, and possesses a splendor of architecture which renders it unique and peerless even in its decay. The city was founded about the middle of the fifth century by refugees from Northeastern Italy, from the towns which had been ravaged and depopulated under Attila. The colonists were chiefly from Padua, one of the oldest settlements of the Veneti, but there were numbers from Altino, Concordia, and other places. Still Padua was regarded as the mother city. Unable to find a place of safety upon the land, these refugees sought it in the islands of the sea. The security and growing prosperity of the Venetians attracted other colonists, until the increasing numbers developed plans for a permanent establishment. For some years the central point was at Malamocco, upon the shore of the sand islands in the open Adriatic; but the island of Rialto, upon which Venice stands, proved the most attractive situation, and was finally adopted as the site of the new city. The inundations of barbarians advanced and retired, at last leaving the Venetians free to cultivate upon the main-land and traffic on the sea. Their situation and necessities impelled them from the first to commercial enterprises. A trade sprang up at an early period with the inhabitants of Greece and the adjacent islands and of the eastern shores of the Mediterranean, which slowly developed that capacity for commerce which produced such remarkable results.

The problem how a city could be planted in the midst of the sea, and made both habitable and attractive, is solved with the first glance along the lines of stately edifices that make the architectural fame of Venice. It was a bold conception, full of originality and of novelty, involving considerations of health, of convenience, and of expense; yet all these questions were not only successfully met, but a magnificent city was created, which for nearly a thousand years stood among the first cities of the world.

It is a singular fact that the Venetians have never published their own history. When the islands became overspread with habitations, the people undoubtedly constructed houses upon piles, like the more ancient lake-dwellers, though historical accounts are entirely silent upon the subject. The islands could furnish but a small part of the area covered by the city, and the expensive method afterward resorted to for the extension of that area was impossible until considerable progress had been made in the accumulation of wealth. The Venice of the fifteenth and sixteenth centuries was very different from that of the eighth and ninth. It required science and art, great resources of wealth and industry, and a powerful class of merchant princes to create the Venice of history. These came slowly with the ascendency which Venice ultimately gained over the commerce of the world.



A FUNERAL IN VENICE—ON THE WAY TO TH O SANCT

[Published by Special Arrangement with the Author.]

DEAD MEN'S SHOES:

A Novel.

By MISS BRADDON,

Author of "Hostages to Fortune," "Lady Audley's Secret," "Strangers and Pilgrims," "Taken at the Flood," "A Strange World," etc.

CHAPTER XXI.

HALF CONFIDENCE.

"What do you mean by not having any bride-maids, Sibyl?" demands Jenny, as the sisters walk slowly along the garden path. "You can't be married without them, can you?"

"Yes," answers Sibyl; "I know a girl who was married one morning with not a soul belonging to her in the church."

"Gracious goodness! Who gave her away?"

"The beadle."

"How horrid!"

"And now let's be serious, Jenny. Do you remember that man who came here two years ago, in the winter, and questioned you about me?"

"As if I were likely to forget him!"

"If he were to come again and want to see me, what should you say to him?"

"Well, that would depend upon how he was dressed. If he looked like a beggar, as he did last time, I should tell him some bouncer or other, and send him away, because I'm sure you wouldn't like a ragged person to come and ask for you at Lancaster Lodge."

"What a sensible girl you are, Jenny."

"Yes, I believe my head is screwed on pretty tight."

"Now listen, darling. If that poor young man should come here again and ask you questions about me, you must contrive to send him away with the idea that I am ever so far away from Redcastle—in Scotland, Ireland, any where you like. But you must not say that I am abroad, as he knows that I'm within a twenty-four hours' post of London. Say what you like, but don't let him know that I'm in Redcastle; and whatever you do don't mention Uncle Trenchard's name."

"I'll be as secret as the grave," answers Jane, solemnly. "Don't you think that tea will be overdrawn?"

"Let it draw a little longer. We all like it strong, you know. You shall have this hat next week, Jenny, since you think it pretty."

"Pretty! It's absolutely divine! Marion will be awfully jealous."

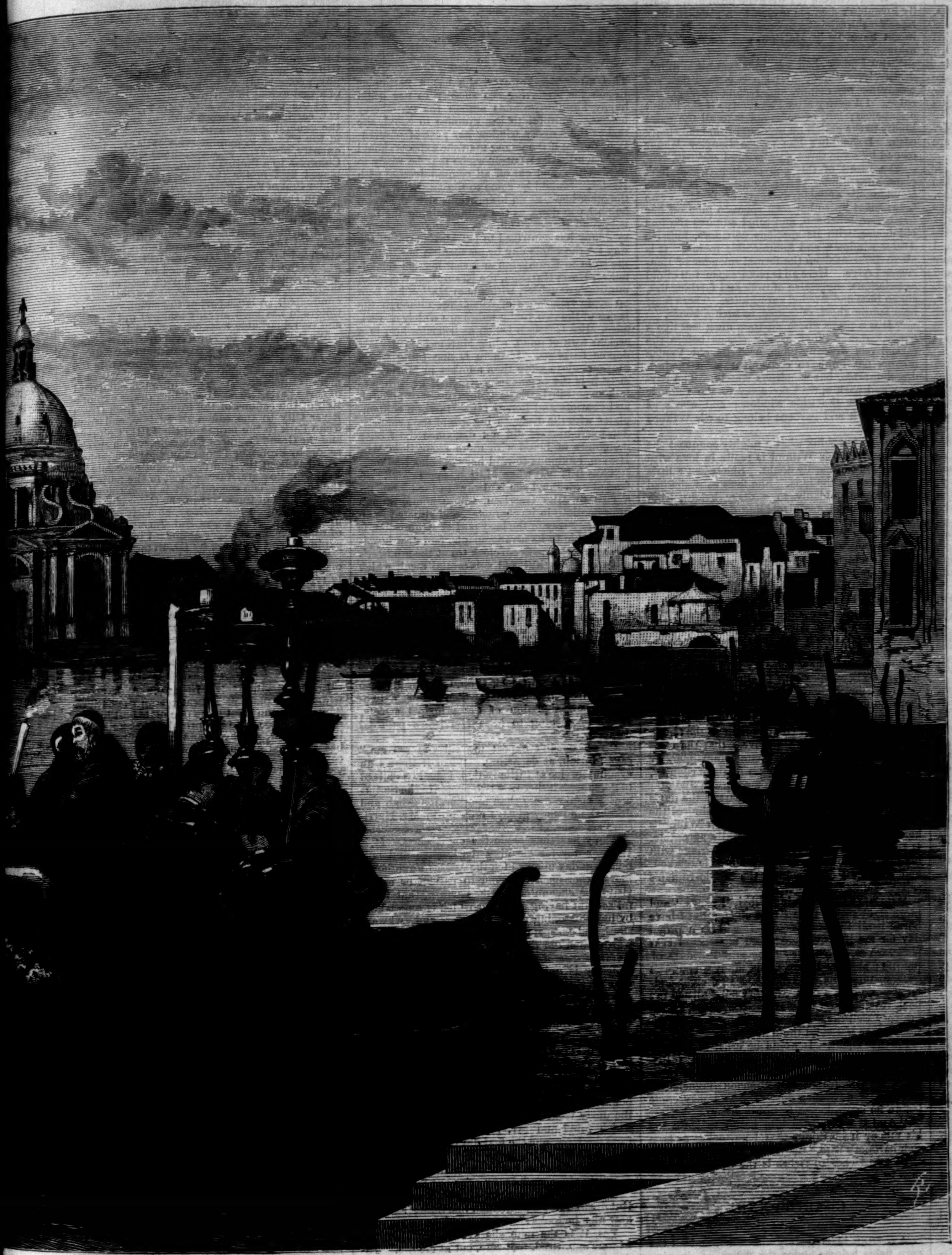
"I can't help that. If Marion were a little more civil, I should give her plenty of pretty things. Now listen, Jenny. Suppose that poor young man were to say curious things—were to tell you something strange about me—"

"What could he tell me?" asks Jane, making her eyes as round as marbles.

"Never mind what. You must not be surprised, and you must not let him discover any thing from your manner. Above all, remember that he is to know nothing about Uncle Trenchard. It is nothing wrong that I am asking you to do, Jenny, except so far as it is wrong to tell a falsehood, and I really think even that is excusable when one's in a great dilemma."

"*I* don't mind telling a bouncer," says Jane, boldly. "Bouncers never weigh much on my conscience."

"It is very stories in a
way. You ou that, Jenny.
this is quite a case. It is
the best—all w in the end.
shall love you if you will h
out of my diffic the person
of may not co I only wi
to be prepared should come.
"I'm prepa Jenny,
"Poor fellow! for him th
ter winter's da so tired an
—very good-lo spite of all.
handsome he m he's well dres
"Yes, he is ," says Siby
sively.
"And you li —just a little
"I loved hi heart—I lov
still—I am tru ugh all diffic
Remember tha ."
"Gracious!" "And it is
account that yo to marry Si
ford Candonne ask you?"
"Yes, Jenny
"But I say he should co
the front-door, Hester shou
hold of him?"



O SANCTA.—[From a Picture by Miss Clara Montalba.]

stories in a general
that, Jenny. But
case. It is all for
in the end. And I
if you will help me
the person I speak
I only wish you
should come."
red Jenny, boldly.
ry for him that bit-
ed so tired and worn
spite of all. How
he's well dressed!"
me," says Sibyl, pen-

—just a little bit?"
y heart—I love him
ough all difficulties.
y."
"And it is on his
e to marry Sir Wil-
o ask you?"

he should come to
r Hester should get

"You must be on the watch to prevent that. If he comes at all, he is likely to come within the next few days. I rely upon your cleverness to prevent his seeing Marion or Hester."

"Very well. It will be difficult, but I'll do my best. And now I'd better run and call Marion to tea, or she'll begin to think there are secrets between you and I."

"Between you and me, Jenny."

"Oh, bother! If I say me, it's I; if I say I, it's me. I'll run for Marion."

Again appears that vision of legs, whirling wildly, and scanty skirts flying in the wind. Sibyl strolls along the path, and looks at the big cabbage-roses, the red crinkled wall, the sprawling vegetable marrows, the flush of uncultivated fertility. Red and yellow dragon's-mouth on the top of the wall. Stone-crop in full flower yonder on the sloping roof of the tumble-down old shed that serves as a stable converts the thatch into a roof of gold. Butterflies, bees, and all the summer insects are flying from flower to flower, carrying the yellow pollen on their honey-smeared wings, and intermarrying all the families of blossoms as they flutter to and fro. It is only poverty's poorly tended garden, but how full of color and perfume and beauty! It is almost as good as Uncle Trenchard's velvet lawn and mosaic flower beds. One feels more at home here, thinks Sibyl.

"I wish I were Jenny or Marion, without a care for what to-morrow may bring forth," she thinks, "even though I forfeited my chance of Uncle Trenchard's fortune."

Marion comes along the path by the gooseberry bushes presently, tearing her muslin skirt once or twice by contact with the straggling thorny branches on the way, and muttering little ejaculations which come as near swearing as a lady can permit herself to venture.

"Plague take the brambles!" she cries; "at Uncle Trenchard's the kitchen-garden is in its proper place, not all mixed up with the flowers. How you must laugh at us, Sibyl, for drinking tea in such an arbor as that, and calling it pleasure."

"Not at all. I am very fond of Uncle Robert's old garden, and I think every thing grows here better than at Lancaster Lodge."

"It's very considerate of you to say that, in order to reconcile us to our lowly lot," replies Marion, with a sneer, as she takes her place on the narrow green bench, and begins to pour out the tea.

"Milk and sugar, I suppose? You used to take both when I had the privilege of being intimate with you. Of course it's cream at Lancaster Lodge, and the sugar doesn't look as if it had the jaundice, as ours does."

Marion is not comfortably awake yet. Her eyes have a watery look, the great lump of hair and padding with which she adorns the top of her head is pushed awry. Her toilet has an air of faded fashion, of tumbled frippery, which is suggestive of a struggle to be fine under disadvantages. No dress is more becoming to a girlish wearer than fresh untumbled muslin, but a muslin dress that has been worn three days and slept in three afternoons is not the loveliest of garments. Marion has pinned a bow here and there, and has put on the last fashionable ruffle, at elevenpence threefarthings, and has done her best to embellish the soiled muslin, but the result is failure, and she feels that it is so as she looks at Sibyl's pure white cambric and delicate Madeira embroidery.

"I wonder you are so fond of mauve, Sibyl," she says, after a critical survey of her sister's hat. "It doesn't suit you by any means. You look as white as chalk."

"The warm weather is rather trying," answers Sibyl.

"And you have such black marks under your eyes."

"I have not slept well lately."

"You look like it. One would think that you had something dreadful on your conscience. Take that horrid caterpillar off the bread-and-butter plate, Jenny. I declare this den of yours swarms with reptiles! I saw a toad under the bench yesterday."

"Toads are valuable animals," answers Jane. "They eat the snails like one o'clock."

"Another of your lady-like similes. Poor Uncle Robert! I pity him when I think how his money is wasted in paying for that child's schooling. The only education she gets is the bad language she picks up in the street on her way to school and back. If Uncle Trenchard had a spark of family feeling he'd send her to a good boarding-school where she'd be licked into shape."

"Licked into shape isn't *my* idea of elegant language," remarks Jenny, with her mouth full of bread-and-butter.

"But I forgot," pursues Marion, ignoring this interruption. "Uncle Trenchard reserves all his generosity for *one* member of this family. Any attempt of ours to obtain a share of his favor would be regarded as an intrusion. We are outsiders. But if ever a child was going to ruin for want of proper tuition, Jenny is that child."

"I should have thought you might have taught her yourself, Marion," says Sibyl.

"Should you? Then perhaps you'll be kind enough to try the experiment some morning for an hour or two, before you think any more about it. A more unteachable brat I never came across in all my life, and I took the fourth class at Miss Worrie's for a week when you were laid up with scarlatina."

"I don't like to be taught by an ignoramus," exclaims the contumacious Jenny. "Who was it said *nous allerons* was the future of *aller?* People should learn before they teach. At least that's my idea of tuition."

Sibyl, wearied with these recriminatory passages, looks at her watch, and finds that it is time for her to go back to Lancaster Lodge.

"It's half an hour's walk," she says; "and I must be dressed for dinner by seven. Uncle Trenchard likes me to be in the drawing-room half an hour before dinner."

"Ah, no wonder you don't care about our cake, when you're going to have a regular tuck out at half past seven."

"If you knew how little appetite I have for Uncle Trenchard's grand dinners, Jenny, you wouldn't envy me," says Sibyl.

"In fact, my dear Jenny," exclaims Marion, going over to the enemy, "Sibyl is a woman of fashion—a superior being, whom you and I are not qualified to comprehend."

This remark winds up the skirmish; Sibyl wishes Marion good-by, and leaves the arbor, followed by Jenny, who hangs on to her as they walk down the narrow path. At the kitchen window Sibyl pauses to say a civil word to Hester.

"And how are you, Hester, this warm weather?" she inquires.

"Just as hard at work as if it was cold weather," replies Hester, in no wise mollified by the sweetness of this address. "Your uncle's shirts have to be washed, even if it is the dog-days, and the perspiration running down one's face. As to how I am in myself, I haven't got time to think whether I'm ill or well, and that's all about it."

"I hope Uncle Robert is feeling better than when I saw him last," remarks Sibyl, playing with the ivory handle of her parasol, embarrassed by the faithful servant's stern countenance.

"Then he isn't," snaps Hester. "And a deal you care about it. I wouldn't be a n'ypochrite, if I was you, Miss Sibyl. You've got your rich uncle. Stick to him. And don't pretend to care about the poor uncle that brought you up."

"Upon my word," exclaimed Sibyl, half angry, "I wonder that I ever come here!"

"So do I, miss. You come so seldom that you might just as well stay away altogether. It would be more consistent."

CHAPTER XXII.

RECEIVED BY THE COUNTY.

At half past twelve o'clock on the following day Sibyl and Mr. Trenchard start on their drive to the How. It is more than an hour's drive, even with Mr. Trenchard's well-fed horses, who are used so little that they are in a chronic state of either wanting to run away or languishing into a crawl. Their paces between Redcastle and the How are an alternate bolt and dawdle, and perhaps, on the whole, they take more time about the journey than the less pampered steeds which ply for hire at Redcastle Station.

Sir Wilford Candonnel is smoking his cigar on the grassy walk inside the moat as Mr. Trenchard's carriage drives through the gateway. The How is a good old place of the moated grange order. Tudor gables and windows in front; roofs and chimneys at the back of the premises of an earlier period; a fine old chapel, which has been converted into a drawing-room; a monkish refectory, which has been made a billiard-room. The gardens are lovely, and that deep wide moat, with its dark still water and smooth green banks, adds not a little to their beauty. A swan comes sailing down the dark shining water as Sibyl alights, assisted by Sir Wilford, who has thrown away his cigar and come to welcome his guests.

"How late you are!" he exclaims. "I have been expecting you for the last two hours. Now what will you see first—the stables or the gardens?"

Sibyl is going to say the gardens, but Mr. Trenchard, who knows that his host's tastes are turfy, votes for the stables.

"I'm so glad you like stables!" exclaims Sir Wilford, addressing himself to Sibyl, as if the choice were hers. "I'm rather proud of mine, you know. I've spent a good deal of money upon 'em. They were regular pig-sties when I inherited the place. My poor father didn't care about his stables, you know. As long as he had a couple of carriage-horses to drag the family about, a weight-carrying cob for his own use, and a pony or two for us children, he was satisfied. His horses weren't members of his family. Why, in his time the gardeners and farm laborers were as well accommodated as the horses," concludes Sir Wilford, as if this were the summit of iniquity.

They traverse a shrubbery and find themselves in the stable department, a spacious quadrangle, stone-paved, with a stone basin of water in the middle. Numbered doors and windows adorned with flower-boxes surround this neat square quadrangle, each door opening into a loose box, each number belonging to a special quadruped in Sir Wilford's stud. Within, the loose boxes are as neat as a spinster annuitant's best parlor. Each horse is provided with a cat or dog for company, while one animal, more social than the rest, is not satisfied without the society of a stable-boy, who sits in a corner of his box reading the paper all the summer afternoon, while the lordly beast stares dreamily at him across the swinging door, and makes an occasional snap at him, displaying an appalling range of long yellow teeth, in pure playfulness.

Sibyl is introduced severally to the horses, which are swathed in double sets of clothing, as if they were in Siberia.

"Why are the poor things wrapped up so this warm weather?" inquires Sibyl.

"That's to keep up the beauty of their coats, mum," says a stable-boy.

Numerous animals are unclothed and brought out in the sunny quadrangle to display their various paces. They all seem pretty much alike to Sibyl, except that some are thin and some thick. Sibyl admires the slimmer animals, but Sir Wilford, Mr. Trenchard, and the stud groom go into raptures about the thicker and more stalwart quadrupeds.

"There's a shoulder," says the groom, punching a bull-necked brute. "Carry a church."

"There are legs!" cries Sir Wilford; "regular gate posts!"

"Shall I bring out Bull of Bashan, Sir?" inquires the stud groom, and another thick-set beast is led forth, plunging viciously to the rearward as he emerges from his cool retreat.

Bull of Bashan is the gem of the stud. His leading qualification is cobbiness, thick neck, thick legs, a straight line from hock to fetlock, short barrel, broad chest, an eye like Jove to threaten or command, and not a white hair about him, as the stud groom remarks complacently. Time was when Bull of Bashan would have been esteemed a serviceable horse for a village miller or a tenant farmer. To-day he is the last fashion for a gentleman of fortune.

"Ran-away with a stable-boy yesterday morning when he was being exercised," says Sir Wilford, approvingly, patting the beast's solid shoulder, which familiarity the Bull resents by sticking his ears back till he appears to be unprovided with those appendages, and giving a vicious kick in the direction of his master's shins.

"How do you like the Bull, Miss Faunthorpe?"

"Isn't he rather bad-tempered?" inquires Sibyl, doubtfully.

"Oh, he's a lively horse, I admit, but the best goer in the stable. The men don't care about riding him, but he and I understand each other, don't we, Bull? There, take him in, Chanter."

They look into other loose boxes, and Sibyl begins to think there is no end to the horses; but the stable inspection is over at last, and they go back to the gardens, where the baronet's sisters condescend to join them.

Phœbe Candonnel is a little more inclined to be civil to-day than she showed herself at Lancaster Lodge yesterday. She tells Sibyl the names of roses and ferns, and makes herself otherwise agreeable. This amelioration of the young lady's manners has been brought about by a domestic process which Sir Wilford calls "a jolly good setting down."

The baronet has informed his sisters in the plainest language that he considers Miss Faunthorpe the nicest girl he has met for a long time, that he has been informed that she has large expectations from that old Indian beggar, meaning Stephen Trenchard, and that in his, Sir Wilford's, opinion she would suit him admirably for a wife.

Whereupon the two sisters, Phœbe and Lavinia, as with one voice, exclaim, in the words of Mrs. Stormont,

"Wilford! A girl of no family!"

"Hang family!" ejaculates Sir Wilford. "We've got pedigree enough, and to spare. The needful thing is ready money."

"Oh, Wilford, you are rich enough, surely."

"Oh, I can rub along, if that's what you mean," answers the baronet. "But I could buy the Longley Bottom Estate if I had fifty thousand to dispose of, and then I should be the largest land-owner between this and York. There's an upland meadow that would make the finest gallop in England, and you know how badly I want some good training ground."

"Well, Wilford, if I were the head of the family I wouldn't degrade myself by a plebeian marriage for the sake of a few paltry thousands. You might have Lady Malvina Vielleroche for the asking."

"But I never shall ask," answers Sir Wilford, decisively. "Lady Malvina is a good deal too weedy for my money, and I don't like 'em that color. I'd marry Miss Faunthorpe if she hadn't a sixpence; but, of course, I take all the more kindly to the notion on account of that old chap's cash. I shouldn't like to see Longley Manor owned by some three-quarter-bred cockney."

The result of this conversation, which took place after dinner yesterday evening, is Phœbe Candonnel's amiable welcome of to-day. She takes Sibyl up to her own room to take off her hat before luncheon, and Sibyl admires the fine old house, with its spacious corridors, massive Tudor windows, and innumerable rooms. It is all so different from the formal splendor of Lancaster Lodge. Here all is picturesque, full of old associations, suggestive of ruffs and farthingales, silken hose and jeweled sword hilts. There must be a family ghost, of course, in such a house.

"It is a place whose mistress must feel like a queen," thinks Sibyl, as she stands before the carved oak dressing-table, with its old Venice mirror, not quite so convenient as a modern dressing-table, but wondrous stately. The gardens and park spread far away to the summer woods below the wide window; and woods as well as park and gardens belong to Sir Wilford Candonnel.

She can but think what a mighty conquest she has made: if Sir Wilford is really in love with her, as she can hardly doubt. She is just a little intoxicated by the idea. She feels as if she had been raised suddenly to a dizzy height, from which she must come toppling down presently. She feels as she has often felt in a dream years ago at Miss Worrie's boarding-school, when her slumbers were frequently visited by a vision of pride in which she saw herself wooed by some rich and noble suitor, and from which she awoke, at the shrill peal of the school bell, to find herself in the bleak, bare dormitory, with the prospect of a winter day's dreary toil before her.

Luncheon at the How is a bounteous and hospitable meal in an oak-paneled dining-room. After luncheon they explore the old house, which, although not a show place, is well worthy that honor. They look at the family pictures, which seem to Sibyl rather a collection of wigs than of faces, so much more distinctive are the wigs than the countenances they embellish. The portrait gallery is, of course, a compendium of the family history, and Sibyl here discovers that the Candonnels have produced alternate commanders by land and sea for the protection of their country, and have occasionally blossomed into a Judge.

Stephen Trenchard takes his part in the day's proceedings with supreme patience, admires the family portraits just as he admired Sir Wilford's horses, and makes himself generally agreeable. It is only when he is seated in the carriage with his niece that the tension of the bow is relaxed, and weariness overshadows the Anglo-Indian's sallow countenance.

"Rather a long morning, Sibyl," he says, "and more sight-seeing than I care about; but I have borne it all for your sake. It will be a proud day for me if I live to see you mistress of that place. Yes, Sibyl, one of the proudest days of my life; and yet I have made many a conquest over fortune since I left Redcastle, eight-and-forty years ago, a gaunt, hungry lad—turned my back resolutely on my native town, Sibyl, knowing very well that there was nothing but starvation for me if I staid there any longer."

Sibyl is silent. It would be cruel to dispel a fancy which evidently gives the old man pleasure. Let him dream on. If what Mrs. Stormont says is true—and Stephen Trenchard's strength is dwindling fast—the end may come before he is awakened from his dream.

"And it will please him better to leave me his money if he thinks that I am going to be a rich baronet's wife," reasons Sibyl within herself. "To add riches to riches is the delight of such men as he."

CHAPTER XXIII.

JENNY'S VISITOR.

Another blazing July afternoon, and all the corn fields baking under the generous ripening sunshine. Jenny Faunthorpe lolls in her favorite arm-chair—a dreadfully dilapidated arm-chair it is, with a faded chintz cover which is always grimy—in the surgery window. She is very fond of sitting in the surgery, chiefly because it is against her uncle's household laws, if any man so easy-going and mild as Dr. Faunthorpe can be said to be a lawgiver in his household, that she should sit there. It is not an attractive apartment. It is dirtier than any other room in the house, Hester being strictly forbidden to interfere with things in this sacred chamber, or, in other words, to sweep, dust, or scour. Its atmosphere is odoriferous with compound rhubarb pills, colocynth, and pounded aloes. Its counter is sticky with the traces of divers medicines which have been compounded upon it. But there are attractions for Jenny in the room notwithstanding, and she infinitely prefers it to the family parlor. There is the sirup of poppies yonder on the second shelf from the top, in the dusty recess where the spiders have such a good time of it—and Jenny often indulges herself with a few sips of that soporific decoction. If she has a surreptitious novel in her possession, she hides it on one of the lower shelves, behind the delf jar of leeches, perhaps. Sometimes she takes the leeches out and plays with them. At other times, when she is quite sure of not being disturbed by Dr. Faunthorpe, she amuses herself by taking down sundry bottles and making up prescriptions of her own. Thus:

Sirup poppies, 1 oz.
Honey, lots.
Cors roses, ½ oz.
Peppermint, 1 drachm.
Tamarinds, 2 oz.
Aqua pura, 4 oz.

This afternoon, however, she has a particular reason for preferring the surgery to her usual happy hunting grounds among the gooseberry bushes. Faithful to her promise to Sibyl, she makes the surgery window her post of observation, so that if the young man she expects should approach by the front-door she may be ready to receive him, and cut off all communication with Hester. Should he come to the garden wall, on the other hand, as on his previous visit, there can be no harm done, as the wall adjoining the lane is beyond Hester's ken. With infinite diplomacy Jenny has contrived to get Marion out of the way for the whole day by persuading her to take the train to Krampston and visit her old school-fellow, Maria Harrison, the Krampston Wesleyan minister's daughter, with whom Marion has kept up some semblance of friendship, although the tastes of the two young ladies are widely at variance, Miss Harrison being, as becomes her, of a serious turn of mind, while Marion is to the last degree frivolous. If there is one thing which Marion enjoys more than another in Maria's society it is the opportunity which it gives her to talk over Sibyl, whose goings on, gay apparel, and chariots and horses Miss Harrison contemplates with the disapproving eye of the prophets. Jeremiah himself did not denounce the foolish daughters of Israel with more vigor than Miss Harrison exhibits toward her old school-fellow.

Thus it is that when Marion is particularly offended with Sibyl she is always in the humor for a visit to Miss Harrison, whose home, though unpretentious in its character, and situated in an obscure by-way of the busy port of Krampston, is comfortable in its arrangements, and of a hospitable turn. The five-o'clock tea at the minister's table is a plentiful and substantial meal, which makes an excellent substitute for dinner, and renders supper a superfluity.

Jenny, turning to account this idiosyncrasy of her elder sister's, has persuaded Marion that she owes Miss Harrison a visit, and that to-day is a good opportunity for the settlement of that debt. Marion has allowed herself to be persuaded, has put on her best bonnet, and departed for Krampston in the eleven-o'clock train, meaning to have a good look at the shops, which means a two-hours' perambulation of the principal streets, before proceeding to Miss Harrison's paternal dwelling.

"You needn't expect me till you see me," says Marion, at departing. "For if there's an evening service at Little Bethel, I shall be obliged to go, though if there are two people in the Scriptures I dislike more than another, it's Ahab and Jezebel, and they always crop up in Mr. Harrison's sermons."

Jenny has thus made the coast clear. It is Hester's day for cleaning the kitchen and out-houses, a day upon which the Misses Faunthorpe must either open the door to patient or casual visitor or encounter Hester's wrath, that faithful servant having a temper which is aggravated by hearth-stoning difficult corners and awkward steps, and exasperated to fever-point by scrubbing worm-eaten old floors, which "never do one no credit."

Jenny is quite sure that Hester will not appear till she brings in the tea-tray, scarlet of visage and perspiring, and puts it on the table with a bang and a clatter, exclaiming, "There, now, you've got your tea, and don't come worrying for any thing else!"

It is between three and four—the sleepiest hour in the slumberous balmy day, and Jenny basks in the sunshiny surgery window, with folded arms, watching the wasps and vagabond bees bouncing their stupid heads against the roses in the dusty front garden. It is the very hour in which Sibyl and Mr. Trenchard are returning from the How, and the first day of Jenny's watch.

Just as the old minster clock with its mellow tongue chimes the half hour a dusty wayfarer comes in sight, and Jenny cries out loud:

"It's the very man, by all that's wonderful! But dressed like a gentleman this time; and, oh, how nice he looks!"

Yes, it is the man she saw in the lane two winters ago, tired, foot-sore, out at elbows. To-day he is as well clad as any man in Redcastle, and he walks as if he had only come from the station.

He looks about him doubtfully for a minute or so, as if unfamiliar with the front of Dr. Faunthorpe's house, then sees the name upon the brass plate, and approaches boldly, opens the gate, and comes in.

"If Marion or Hester were in the way now, it would be UP," Jenny says to herself.

Before the stranger can ring she has opened the door, and stands face to face with him upon the threshold. [TO BE CONTINUED.]

SCIENTIFIC INTELLIGENCE.

In the summer of 1867 Professor J. W. Powell, of Bloomington, Illinois, undertook to make an examination of the fossil bone region of the Bad Lands of the Niobrara and White River, north of the Platte, but, owing to threatened hostilities on the part of the Indians, the military authorities declined to permit him to run the risk of entering their country. He accordingly turned his attention to Colorado, and made some explorations in the direction of Grand River. In 1868 he again took the field, and proceeded first to the Middle Park, and thence down the Grand River to the head of Cedar Cañon, then across the Park range by Gore's Pass, and by October was encamped on the White River, about 120 miles above its mouth. Here he built cabins and established winter-quarters, and devoted the winter season of 1868–69 to excursions southward to the Grand, down the White to the Green River, northward to the Yampa, and around the Uinta Mountains.

Every season since then the professor has been engaged in continuing his work, until what was commenced simply as an incidental summer's trip became an elaborate survey of the geography, geology, ethnography, and natural history of a vast extent of territory.

At the outset of his enterprise Professor Powell carried on his work without any aid from the general government beyond some facilities in the way of obtaining army rations. Subsequently, however, appropriations were made by Congress to a limited extent, and his survey was placed first under the War Department, then under that of the Interior, then under the Smithsonian Institution, and finally back again under the Interior Department, to which branch of the service it now belongs.

As in other government expeditions of later date, all branches of research have been well attended to. In the later years Professor Powell's labors have been carried on with the utmost precision, a base-line having been correctly measured, and a regular trigonometrical survey conducted. A large part of the cañon region of Colorado has been already mapped out by him, and its remarkable features well illustrated.

We have now to chronicle the appearance from the government press of the first volume of the final report of Professor Powell in the form of a handsomely printed quarto, with numerous illustrations. This volume is composed of three parts. First, the history of the exploration of the cañons of the Colorado, from Green River City to the cañon of Lodore, and from Echo Park to the mouth of the Little Colorado and the Grand Cañon of Colorado, with a special report by Professor Thompson, the topographer, who has been the companion and associate of Professor Powell during most of the period of the survey. The second part is upon the physical features of the valley of the Colorado. The third part, upon the zoology, consists of papers upon the genera *Geomys* and *Thomomys*, forms of rodent mammals very abundant in the region explored, and prepared by Dr. Elliott Coues.

The illustrations of the volume consist of two maps and eighty wood-cuts, of which about thirty represent geological sections, and about fifty landscape and other views. These latter are especially interesting from having been well engraved by H. H. Nichols, of Washington, from stereoscopic negatives printed directly on the wood, thus guaranteeing their fidelity, and proving that to be practicable which has been generally considered out of the question.

In the death of Dr. Increase A. Lapham, which took place at Milwaukee on the 14th of September, the West loses one of its best known men of science. He was prominent as a naturalist, geologist, surveyor, and meteorologist, and has rendered excellent service in these several capacities.

Dr. Lapham was born at Palmyra, New York, on the 7th of March, 1811, was educated as a civil engineer, and served in that capacity on the Welland Canal and on the canal at the Falls of the Ohio River. In 1833 he was chosen secretary of the Ohio Board of Canal Commissioners, which place he held for three years. In 1836 he moved to Wisconsin, and settled at Milwaukee, where he resided until his removal to Oconomowoc, Wisconsin, a few months ago. In 1862 he was appointed Assistant Assessor of Internal Revenue; and upon the passage of a law for the geological survey of the State in 1873, he was appointed to take charge of it, which position he held until February last.

Dr. Lapham was one of the first members of the State Historical Society, and the founder of the Wisconsin Academy of Natural Sciences and Arts. His most important publication is upon *The Ancient Monuments of Wisconsin*, published in 1855 by the Smithsonian Institution, and containing a full account, well illustrated, of the remarkable mounds found in Wisconsin, representing various animal forms.

Dr. Lapham was greatly interested in the natural history of the West, and made large collections of shells and fossils, many new species of which are credited to his industry. He also devoted much time to the study of plants, and possessed at his death a very complete herbarium. Various subjects of mineralogical inquiry occupied his attention; among them that of meteorites, in which direction he made some noteworthy discoveries. It is to Dr. Lapham, also, that we owe in great measure the action by Congress of establishing a government Weather Bureau, General Paine, of Wisconsin, when a member of Congress, having introduced a memorial prepared by Dr. Lapham, and securing an appropriation for a system of storm warnings, which was placed by the Secretary of War in charge of General Myer, the present Chief Signal Officer. This subject has been growing in importance with each successive year, until now it is one of the most important public scientific bureaus in existence.

Dr. Lapham's death was very sudden, and, as supposed, from an attack of disease of the heart, as he was found dead in a boat in which he had been fishing in a lake in the vicinity of his residence at Oconomowoc.

Professor E. T. Cox has published the Sixth Annual Report of the Geological Survey of Indiana, for 1874, which, like its predecessors, gives in a compact and comprehensive form the details of progress. The present volume covers the counties of Jackson, Brown, Scott, and Jefferson, accompanied by maps, together with a report on Morgan County. Special reports on antiquities in certain localities are given, and the importance of Artesian wells is referred to. Some interesting illustrations of prehistoric remains are also contained in the volume. Not the least important feature is a synopsis of the genera of the fishes of Indiana, prepared by Professor D. S. Jordan. There is also a partial list of the flora of Jefferson County, by Mr. John M. Coulter, of Hanover College.

The publication, by the Messrs. Appleton, of *The First Book in Zoology*, by Edward S. Morse, of Salem, promises to mark an epoch in the history of elementary instruction in American zoology, no work since the appearance of that of Agassiz and Gould being so well entitled to consideration in this respect. The object is to give a general knowledge of the structure, habits, mode of growth, and other leading features of the common animals of the United States, among which, as might have been expected from the author's well-known prepossessions, the lower forms of marine invertebrates receive special attention, the vertebrates, indeed, being dismissed in a very small number of pages.

Very little effort is made to teach systematic zoology, so called, but illustrations are taken from the most representative invertebrates, and their general characters are given, from the masterly original sketches of Professor Morse.

It will be remembered that several years ago an international commission was appointed to mark the boundary between the United States and British America, from the Lake of the Woods to the summit of the Rocky Mountains, along the 49th parallel of latitude. This survey from the east was made to meet the point where the line started in 1857 from the Pacific Ocean had stopped in 1860. The superintendence of the second branch of the American line of the survey, as that of the first, was intrusted to Mr. Archibald Campbell, of Washington, with Major Twining, of the United States Engineers, as astronomer and surveyor, and Dr. Elliott Coues as geologist and naturalist, and the line was finished in 1874. Since then the American party has been engaged in preparing its report for publication.

The British branch of the survey has been not less industriously occupied, and has, indeed, anticipated its American colleagues in commencing the publication of the report, of which the first part, that on geology and the resources of the region of the 49th parallel, by George M. Dawson, Esq., is before us. Mr. Dawson is a son of the well-known Principal Dawson, of M'Gill College, Montreal, and inherits his father's tastes in the line of geology and paleontology.

The report, which is addressed to Major D. R. Cameron, the British commissioner, is quite comprehensive, and refers to the physical geography and general geology of the whole country, and the special geological structure of particular portions of it. The economical geology, which is represented mainly by the iron deposits and the coal, receives special attention. A considerable portion of the volume is devoted to the study of the glacial period and superficial deposits, as also the capabilities of the region, with reference to settlement. In the appendix is a list of fossil vertebrates and plants, the butterflies and orthoptera, the land and fresh-water mollusks, and the recent plants.

We hope soon to be able to chronicle the appearance of the American report, which it is understood will be fully equal in extent and thoroughness of execution to those of similar character recently published by the War and Interior departments.

The death of Professor Samuel D. Tillman took place on the 4th of September, at the age of seventy-two. Professor Tillman was well known as a student of physical and experimental science, and also as a member and officer of the American Institute of New York.

At the recent meeting of the British Association Colonel Montgomerie gave an account of the glaciers of the Himalayas, which are most developed in Baltistan, in Northwestern India. According to his statement, these glaciers gradually increase in size from east to west, many of them being more than twenty miles in length, and one, Biafo, thirty-four miles. The thickness of the ice was in some cases found to be 400 feet. The phenomena of progress, etc., were found to be similar to those observed in the Alps.

Professor Oskar Grimm has lately published an account of the investigations made, under the direction of the Society of Natural History of St. Petersburg, upon the fauna of the Caspian Sea. The results of these had been extremely interesting and rich, no less than eighty new species having been discovered, and the total number known raised to 150.

According to Professor Grimm, the Caspian appears as a large, half-salt sea, possessing partly its own animal forms and partly such as occur in other seas, the former being descended from species still living or already extinct, or slightly changed from foreign related species in other waters. The species which occur in other seas are forms which possess great tenacity of life, as they still manage to sustain existence, their former associates of less hardiness having died out.

The faunal affinities of the Caspian are with the Sea of Aral, the Black Sea, and the Northern Ocean, but those with the Arctic Ocean are more recent than with the Black Sea, in which the seal, the coregonus, and other species common to the Caspian and the Arctic Ocean do not exist. It has been inferred from the phenomena observed that in the tertiary period there was a large but closed fresh-water basin in Europe and Western Asia, which, by volcanic elevation of the earth's crust, was divided into several smaller basins, such as the Black Sea and Aral-Caspian. At that time the water of the Arctic Ocean broke into the Caspian, and having still a connection with the Black Sea, though a slight one, a few animals, and only a few, reached the sea from the Arctic Ocean.

The Caspian, however, according to Professor Grimm, not only received species from the Arctic Ocean, but has also furnished some to it, especially the sterlet (*Acipenser ruthenus*). As a general rule, in the Caspian Sea the abundance of individuals replaces the abundance of species, and many of the mollusks described by Eichwald as sub-fossil were found living, and not smaller than their extinct relatives. The deepest parts of the sea were inhabited most abundantly, and by quite different species from those at the depth of only a few fathoms. In Professor Grimm's opinion, the Oxus of the ancients at one period unquestionably flowed into the Caspian Sea.

The stadiometer is the name given by Captain Bellomayer to an instrument invented by him, which is intended to give by one simple reading the length of any line whatever, straight, broken, or curved, as drawn on charts and plans executed on all kinds of scales. The principle of its construction is quite simple. A toothed steel wheel rolling along over the given line makes an endless screw move by means of a pinion. Upon the screw a slider, held in place by friction, is then forced to rise or fall. The graduations are marked upon two faces of the instrument, on the right and left of the slider. The instrument carries eight scales, corresponding to the scales of the French, Prussian, Belgian, Italian, and other national charts, together with the scale corresponding to the natural scale of our meter. Other scales which are less frequently used may be derived from those which are engraved on the instrument. In using the instrument it is held at right angles to the chart, the toothed wheel pressing against the surface of the latter. As the wheel is rolled along over a given line, the slider is, by means of the endless screw, pushed along the graduated scale of the instrument, and the quantity of its movement as shown thereon gives the exact line to be measured on the chart. The principle of the stadiometer has been for a long time known and used. For many years the French Dépôt of Charts and Plans has been accustomed to pay its engravers according to the total length of the curved lines which they trace, measuring these lengths by means of wheels rolling along over the lines; but the instrument devised by Captain Bellomayer replaces these elementary devices by a very portable, convenient, and precise instrument.

HOME AND FOREIGN GOSSIP.

It might seem to be taking a backward step in this more refined age to re-adopt any old provincial laws. But certainly in many sections of our country some of them might be revived, in a modified form, to the great benefit of the community. For example, in 1719 New Hampshire passed a law not wholly inapplicable to the present times. It provided that "idle persons or loiterers" should be put to work by the public authorities. The law read as follows:

> "And if any person or persons fit and able to work shall refuse so to do, but loiter on, misspend his or her time, wander from place to place, or otherwise misorder themselves, and be thereby convicted before one or more of his Majesty's justices of the peace, such person or persons shall be sent to the house of correction, and at their entrance be whipped on the naked back by the master of such house, or such others as he shall procure, not exceeding ten lashes, and be then kept to hard labor until he or she shall be discharged by said justice," etc.

A well-enforced law, similar in spirit to the above, modified to suit enlightened times, would soon rid the country of tramps and vagabonds, thin the ranks of beggars, diminish the staring crowds around hotels, shops, and village post-offices; and society would be vastly improved. It is marvelous how many lazy folks there are in the world—people who stand around with their hands in their pockets, forever in the way of the busy multitude. For in America it is the multitude who are busy, and the lazy ones seem more numerous than they really are, only because they are so perpetually in the way of those whose hands are full of work, and to whom time is money.

St. Petersburg journals relate a remarkable instance of the manner in which a burning ship was saved. The Russian war frigate *Olaf*, which had escorted the yacht of the Czarowitz to Copenhagen, was at anchor in the harbor, when a fire was discovered in the vessel only a few feet from the powder magazine. Not only the danger of the *Olaf* was imminent, but other ships were close at hand. The commander, Captain Rehbinder, decided at once that the fire could not be extinguished before it reached the magazine, and thought the only way to prevent a dire catastrophe was to sink the ship. A leak was made in the vessel, the crew and valuable papers and instruments were sent away, and in half an hour the ship sank in shallow water. She was raised the next day, and the captain received high praise for his conduct, and honors conferred by the Emperor.

A widely circulated newspaper paragraph, purporting to be an extract from a letter from Thomas Carlyle to the trustees of Harvard College, scornfully declining the degree of LL.D. recently conferred upon him, proves to have been a hoax. It appears that Mr. Carlyle has by no means been guilty of such rudeness, but, on the contrary, in advance of the reception of the official document conferring the degree, has written a letter of thanks for the honor, and intimating that he will accept it formally when received.

One is never too old to do some good, if the experience of Mrs. Molly Richardson, late of Baldwin, Maine, teaches us any thing. When she was in her ninetieth year she was one day eating an apple. It was a very nice fruit, and she remarked that she should like to raise some like it. She therefore planted the seeds, one of which sprouted, and a thrifty tree grew from it. Mrs. Richardson lived to be ninety-seven years old, and did pick and eat fruit from the tree before her death. Her great-grandchildren now enjoy the fruits of the tree.

A New Hampshire journal makes known to the public that the speediest way to cure the epizootic and make a horse thoroughly happy is to give him onions. In proof whereof the case of a Portsmouth horse is cited, which had a severe attack of the disease, and his owner placed half a dozen onions in the crib with his regular food. The horse tackled three of the onions immediately, and by the time he had swallowed them began to cough and sneeze and prance about, appearing quite indignant, and refusing to touch the remaining onions. For full five minutes he wept at the nose, and then—he was a cured horse. He has not had a cough, a sneeze, nor any symptom of the epizootic since, but he did have the courage to eat the onions remaining in the crib the next day after the cure.

Pea-nuts are coming in—we mean the new crop. Strange how fond Americans are of this nut. It is said that over a million bushels were consumed last year in the United States. Pea-nut oil often goes in the market under the more popular title of "olive-oil."

There was a great stir in London a while ago in regard to a box of keys found in the Thames River, and which was supposed to have been intended to aid in the robbery of jewels and plate in Windsor Castle. It turns out that the box contained the keys of Eton School, which had been stolen by a kleptomaniac student.

Fritz, a German soldier, was ordered fifty lashes for some alleged act of insubordination. The man, disciplined to silence, said nothing, but when the first lashes fell on his bare shoulders he burst into a fit of uncontrollable laughter. The executioner thought this manifestation not complimentary to his skill, and redoubled the strength of his blows. But Fritz laughed on, and when cut down still found difficulty in restraining his mirth. The officer in command, with a curiosity naturally excited, approached the bleeding wretch and inquired the cause of his mirth. "Why," replied Fritz, breaking into a fresh fit of laughter, "I'm the wrong man."

An Irish clergyman believes he has discovered a remedy against the plague of flies, namely, a window garden of geraniums and calceolarias. No flies had troubled him until his plants were removed to another house; then his room was infested. Here is opportunity for experiment.

During the seven years of the existence of the New York Foundling Asylum 6500 children have been received into it, and about 1000 mothers have been sheltered. There are now about 1450 children under the care of the institution.

The leading principles of the Eclectic school of medicine were thus defined at the opening exercises of the Eclectic Medical College of this city: (1) the rational and merciful treatment of the sick; (2) safe medication; (3) liberality and charity toward all physicians, whether of eclectic, adverse, or rival schools of practice.

A caution comes from the Postal Department with the issue of the new postal cards. If any thing except the address is written on the face of the card, it is thereby rendered unmailable, and will be thrown among mail matter marked "held for postage."

The latest discovery reported from Pompeii is the figure of a woman lighting a fire in the stove, while her husband is asleep in bed. One thing is lacking, it is said: the kerosene oil can is not to be found. Probably she happened to be out of kerosene that morning, and is doing the best she can without that valuable kind of kindling.

A mixture of two parts of petroleum with one of turpentine is said to be very efficacious when applied to turning tools. A French machinist announces that by keeping his turning tools constantly wet with petroleum he was able to cut metals and alloys with them, although when the tools were used without the oil, their edges were soon dulled.

A baby rhinoceros, caught in Malacca some six months ago, has recently arrived in this country. He seems to be very dainty in his tastes, having eaten nothing during his two months' voyage from Japan except sweet-potatoes and the very best dried hay.

The organ in Albert Hall, London, contains 138 stops, four manuals, and nearly 10,000 pipes, all of which are of metal. The wind is supplied by steam-power.

In 1870 Russia produced 460,000,000 bushels of wheat; France, 286,000,000; and the United States the same as France. Russia exported one-eighth of her grain, the United States one-fourth, and France none. The United States, however, grows an enormous amount of corn, which the other countries do not.

Iwakura Tomomi, chief of the Japanese embassy that visited England a few years ago, has just presented to the library of the India Office a set of the Chinese version of the Buddhist Scriptures, called *Issaikio*, in Japanese. The work is put up in seven large boxes, weighs about three and a quarter tons, and will require a room to itself.

An eminent French chemist, M. Robing, announces to the French Academy of Medicine his belief that life exists only in combustion; but the combustion which occurs in our bodies, like that which takes place in chimneys, leaves a detritus which is fatal to life. To remove this, he would administer lactic acid with ordinary food. This acid is known to possess the power of removing or destroying the incrustations which form on the arteries, cartilages, and valves of the heart; and as buttermilk abounds in such acid, and is, moreover, an acceptable kind of food, its habitual use, it is urged by M. Robing, will free the system from these causes, which inevitably cause death between the seventy-fifth and the one-hundredth year.

The Parthenon at Athens, that noblest relic of Greece in her glory, is being ruined by the depredations of tourists. Every season visitors knock off limbs from the statues, pull down portions of the frieze, and break off bits of the Doric capitals. The Greeks protect the building as much as possible, and have nearly finished a museum in which to store the most valuable pieces of sculpture.

Years ago, when the Baptists of Hartford began to hold public services, an overzealous member of Dr. Strong's society called upon him and asked him if he knew that John Bolles had started an opposition meeting.

"No," said he; "when? where?"

"Why, at the old Court-house."

"Oh yes, I know it," the doctor carelessly replied; "but it is not an opposition meeting. They are Baptists, to be sure, but they preach the same doctrine that I do. You had better go and hear them."

"No," said the man: "I am a Presbyterian."

"So am I," rejoined Dr. Strong; "but that need not prevent us from wishing them well. You had better go."

"No," said the man, with energy, "I sha'n't go near them. Dr. Strong, ain't you going to do something about it?"

"What?"

"Stop it, can't you?"

"My friend," said the doctor, seriously, "John Bolles is a good man, and will surely go to heaven. If you and I get there, we shall meet him, and we had better, therefore, cultivate a pleasant acquaintance with him here."

The case of the Old South Church still continues to interest the Boston public, the Supreme Court having recently given an opinion concerning it. About 1669 Mary Norton gave the land on which the church stands, and other land adjoining, to certain persons and their successors "for the erecting of a house for their assembling themselves together publicly to worship God," etc., "and for no other intent, use, or purpose whatsoever." In 1845 a corporation of the successors of the original donees was formed, and authorized to hold the land for the support of public worship, for parochial and charitable purposes, and for paying the debts of the corporation. The corporation was also authorized to demise and lease any of said real estate *except the meeting-house and land under the same.* In 1873 a majority of the members of the corporation petitioned the Legislature to remove the restraint upon the sale of the church imposed by the act of 1845, and to grant special power to sell, unfettered by the trusts mentioned in the original grant. The Legislature refused to grant the special license to sell, and referred the parties to the Supreme Court. In court a majority of the corporation claim a right to sell; a minority claim that the property is held subject to certain trusts, which should be fulfilled in the sale. The recent opinion of the Supreme Court is that this trust does not constitute a public charity; that the property can not be sold without license from the court, and that it remains for the court to determine, upon evidence, whether the wishes of the majority or of the minority are most in accordance with the provisions of the trust and the interests of beneficiaries.

AN OCEAN YACHT RACE.

A very spirited ocean race of forty miles, for a $1000 cup, took place October 26, between the schooner yachts *Mohawk* and *Dauntless*, the latter belonging to Commodore Bennett, the former to Vice-Commodore Garner. The match grew out of a challenge published by Mr. Garner, offering to sail any yacht, centre-board or keel, twenty miles to windward from the light-ship outside of Sandy Hook. This challenge was promptly accepted by Mr. Bennett, and after some preliminary correspondence the match was arranged, the yachts to sail "boat against boat," or without time allowance. The *Mohawk* being a centre-board and the *Dauntless* a keel schooner, the match was regarded as a test between these models.

The race, of which we give an illustration on page 916, resulted in a victory for the *Dauntless*, the *Mohawk* having failed, through an error on the return course, to comply fully with the sailing directions. It is admitted that she gave the *Dauntless* a fair beating while sailing on the wind, and it was only when going wing and wing that the keel schooner gained the advantage. There was a good steady breeze throughout the day, which gave the yachts a fair opportunity to test their sailing qualities. It was a brilliant and spirited race, and it is to be regretted that it should have terminated in so unsatisfactory a manner.

HUMORS OF THE DAY.

The rhymer who wrote the line, "Dear to me is the surf-tossed beach," probably had in his mind the recollection of his bill at some sea-side hotel.

An eating-house keeper, who kept a "rest-your-aunt," as the French call a cook-shop, and who prided himself on his ability to get up the best dinners to be had any where, wishing to give the public the full benefit of his skill, perpetrated the following sign: "Try my dinners—they can't be beat." In an evil hour, however, a wicked wag came along and dextrously painted over the initial letter of the last word. The announcement then was, "Try my dinners—they can't be eat."

A footman learned from his master that malapropos meant "out of place." Meeting a brother footman who had been discharged, he exclaimed, "Ah! my dear fellow, I am sorry for you; you are malapropos!"

A traveler was lately boasting of the luxury of arriving at night, after a hard day's journey, to partake of a well-cut ham and the left leg of a goose. "Pray, Sir, what is the peculiar luxury of a left leg?" "Sir, to conceive its luxury, you must find that it is the only leg that is left."

A young actor having played a part tolerably well, Elliston one evening called him into the greenroom, and addressed him to this effect: "Young man, you have not only pleased the public, but you have pleased me; and as a slight token of my regard and good wishes, I beg your acceptance of a small piece of plate." It was, beyond all question, a *very* small piece, for it was a silver tooth-pick.

A gentleman in the city advertised a few days since in the *Times* for a boy. The next morning, on arriving at his office, he found in front of the door a band-box, with this inscription on it, "Will this one answer?" On opening it he found a nice fat specimen of the article which he advertised for, warmly done up in flannel.

The head of a turtle, for several days after its separation from the body, retains and exhibits animal life and sensation. An Irishman had decapitated one, and some days afterward was amusing himself by putting sticks in its mouth, which it bit with violence. A lady who saw the proceeding exclaimed, "Why, Patrick, I thought the turtle was dead?" "So he is, ma'am; but the crather's not sensible of it."

The following letter from a young man was lately addressed to a judge of probate: "Sir,—My father departed this life not long hence, leeving a wife and five scorpions. He died detested, and his estate is likely to prove insolvent. I was left executioner, and being told that you were judge of reprobates, apply to you for letters of condemnation."

DOMESTIC BLISS.—A FRAGMENT.

I am
A married lady of thirty odd.
Every evening I see in their beds
A "baker's dozen" of curly heads.
Every morning my slumbers greet
The patter patter of twenty-six feet.
Thirteen little hearts are always in a flutter
Till thirteen little mouths are filled with bread-and-butter;
Thirteen little tongues are busy all day long,
Twenty-six little hands, with doing something wrong,
Till I fain am to do,
With an energy, too.
And when my poor husband comes home from his work,
Tired and hungry, and fierce as a Turk,
What do you think is the picture he sees?
A legion of babies, all in a breeze—
Johnny is crying,
And Lucy a-sighing,
And worn-out mamma, with her hair all a-flying;
Strong and angry William beating little Nelly;
Charley in the pantry eating currant jelly;
Richard strutting round in papa's Sunday coat;
Harry at the glass with a razor at his throat;
Robert gets his fingers crushed when Susy shuts the door,
And mitigates their aching with a forty-pound roar;
Baby at the coal-hod hurries to begin,
Throwing in his mite to the universal din.
Alas! my lord and master being rather weak of nerve, he
Begins to lose his patience in the stunning topsy-turvy,
And then the frightened little ones all fly to me for shelter,
And so the drama closes 'mid a general helter-skelter.
I'll give you my name, lest you find me a myth:
Yours, respectfully, Mrs. John Smith.

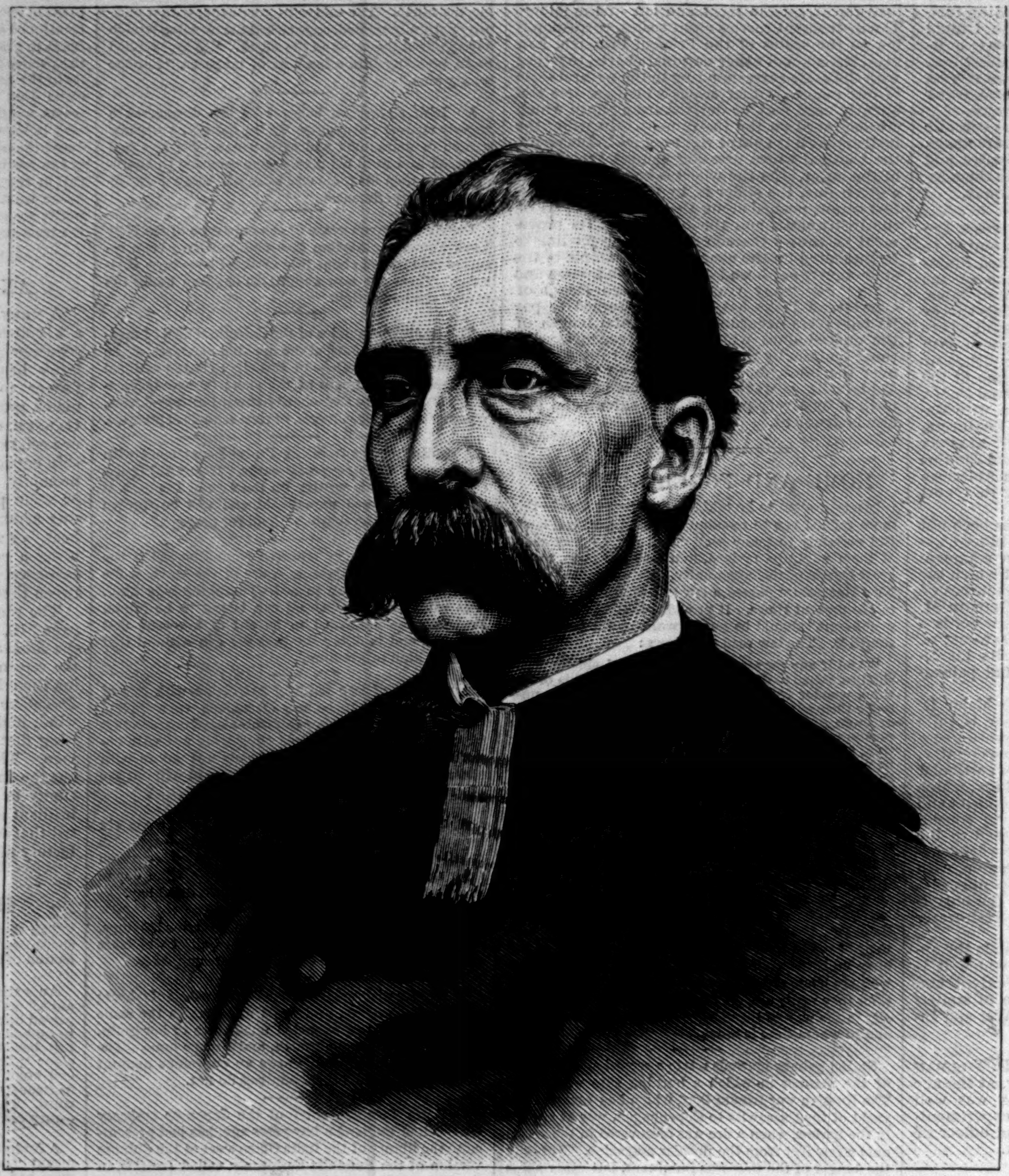
FREDERIC HUDSON.

This eminent journalist and historian of the press, whose tragic death at Concord, Massachusetts, on the 21st of October, was briefly recorded in the last number of the *Weekly*, was born in Quincy, Massachusetts, on the 25th of April, 1819. His youthful days were, however, spent in Boston, and his earlier education was received in the Mayhew School in that city. His father removed to Concord when the son was about fifteen years old, and for two years he attended school in that charming town. At the age of seventeen he came to New York, and was soon afterward engaged on the *Herald*. At that time the staff of the *Herald* numbered three persons.

As time went on, and the number of the *Herald* staff increased, Mr. HUDSON was raised from one post to another, until he became managing editor—a position which he filled for many years with commanding ability and success. He organized the business of getting news to a system, and laid the early foundation of the Associated Press. His enterprise in obtaining news for the *Herald* during the Oregon difficulty led to a combination among the New York papers to secure early intelligence from Europe by a pilot-boat and express from Halifax. When war broke out on the Rio Grande, Mr. HUDSON joined forces with a New Orleans paper, and ran a special pony express to Wilmington, Delaware, where the telegraph was reached. The system was imitated, and it very soon became evident that the telegraph facilities of the country were inadequate to a different set of dispatches for each journal. Two years later the Associated Press was organized, in 1848, and began the conduct of its business upon the methods which Mr. HUDSON had originated.

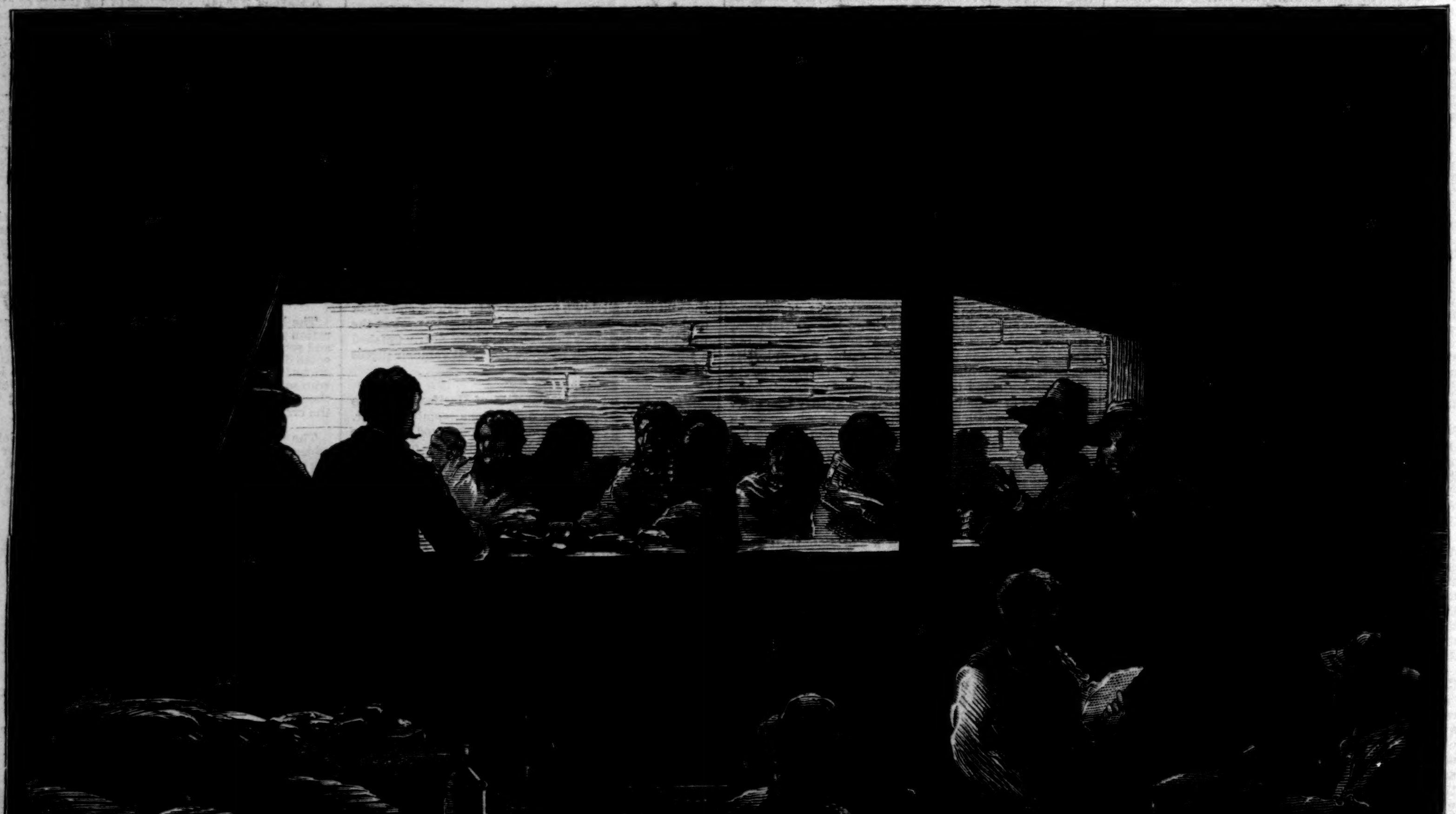
For nearly twenty years longer Mr. HUDSON continued in the position of managing editor of the *Herald*. He was thoroughly and conscientiously devoted to its interests. His whole soul was in his work. Absorbed in the arduous duties of his profession, he rarely went into society, but every public man knew him, and he was always accessible while at work. He would see any one who called upon him at his office. Although a strict disciplinarian, his subordinates never had reason to complain of harsh treatment at his hands, and no unkind word ever passed his lips.

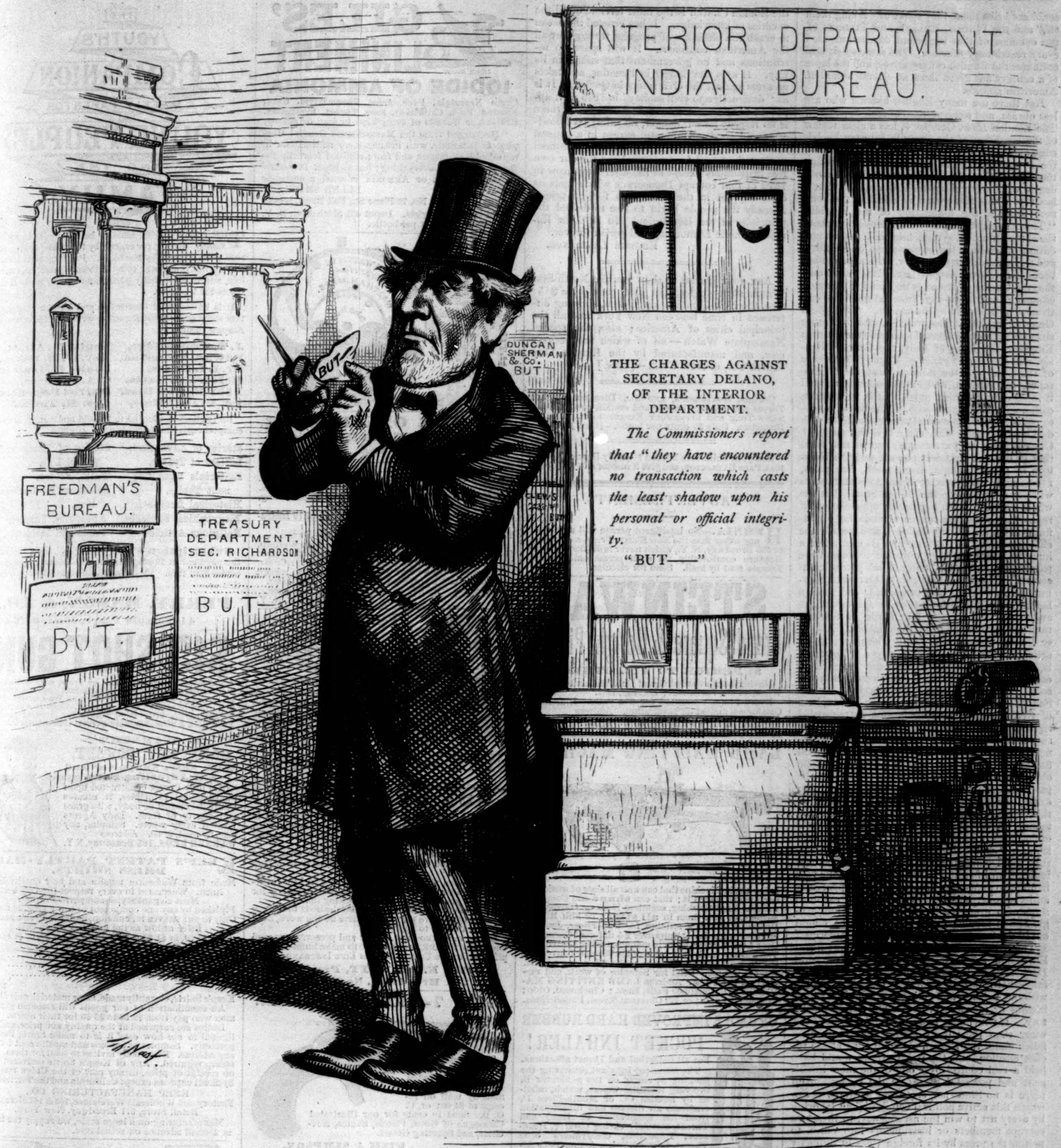
Mr. HUDSON retired from the management of the *Herald* in 1866, on account of the delicate health of his wife. The remaining years of life were passed at Concord, Massachusetts, where he interested himself in local matters, and devoted much time to the preparation of his *History of Journalism in America*, for which he had been for many years collecting material. This important work was published by the HARPERS in 1873. It furnishes a comprehensive survey of the rise and progress of journalism in this country from the publication of the first American newspaper, *Public Occurrences*, in 1690, to the close of the last Presidential campaign. The work abounds in anecdotes of the early days of the chief newspapers of America, and presents a most interesting view of the development of American journalism from the first small and weak attempts down to the present time. Mr. HUDSON's last literary work was an interesting article published in *Harper's Magazine* for April last on the battles of Lexington and Concord. He was greatly esteemed in Concord, and although holding no official position, his loss will be severely felt.


FREDERIC HUDSON.—[FROM A PHOTOGRAPH BY BRADY.]

DISTRIBUTING RATIONS.

This sketch represents the interior of one of the buildings of the Red Cloud Indian Agency, in Nebraska, near where the grand council was recently held. Once a month a crowd of Indians, most of them squaws, assemble at the agency to receive their allotted rations, consisting of flour, coffee, sugar, beef, etc., and return loaded down to their respective homes. The night following is devoted to feasting and revelry, without a thought of the weeks they must starve before another distributing day comes round. Proverbially improvident and shiftless, the Indian rarely takes thought for the morrow. While food lasts he will feast; when there is none he will stoically go hungry.


AN INDIAN AGENCY—DISTRIBUTING RATIONS.


INTERIOR DEPARTMENT
INDIAN BUREAU.
THE CHARGES AGAINST SECRETARY DELANO, OF THE INTERIOR DEPARTMENT.
The Commissioners report that "they have encountered no transaction which casts the least shadow upon his personal or official integrity.
"BUT—"
BUT
DUNCAN SHERMAN & Co.
BUT
FREEDMAN'S BUREAU.
BUT—
TREASURY DEPARTMENT. SEC. RICHARDSON
BUT—
Th Nast

ANOTHER "RESPECTABLE" FAILURE.

LET US HAVE NO MORE "BUTS" IN PUBLIC AND PRIVATE BUSINESS TRANSACTIONS.

OUR PAPAL RULERS AND THE EUROPEAN PRESS.

The interest recently evinced by the English and French papers in the politics of the United States, and in the rapid growth of the papal power among us, shows that foreigners have a more distinct idea of the transatlantic movements of the papacy than many of our own citizens. Says *Galignani's Messenger*, quoting from the *Morning Post*: "The Constitution of the United States is favorable to the development of the Church of Rome, in so far as it leaves all religions free from state interference or control. And it is, therefore, not surprising that the Roman Catholics there have rapidly increased in numbers, and have been able to exhibit their ecclesiastical policy in rather full force and form. The priests harangue their flocks from the altar, giving free utterance to their political views and wishes, and denouncing all legislation that does not commend itself to their judgments. New Jersey is a case in point." The *Post*, with the natural tendencies of a Tory journal, agrees with the Roman Catholics in their denunciation of the common schools, which it thinks nurseries of the worst side of the American character. All the English conservative papers, in fact, are strongly on the side of the Democracy and Tammany Hall, of reaction and ignorance. For the Republican party and its leaders they show as blind a hatred as did their ancestors a hundred years ago for Samuel Adams, Otis, Henry, and Lee. They have no measure of restraint in the violence of their language toward President Grant and his chief advisers. And the zeal with which they enter into our party contests shows that the connection between the politics of the two countries is growing closer as time passes on. The London *Standard*, the chief organ of the rigid English conservatives, is never weary of commending the virtues of what it calls the "conservative" party with us, of exalting the honesty of Democratic statesmen, and attributing to Messrs. Tilden, Wood, and the Tammany leaders qualities which they have not yet exhibited in their native haunts. It is plainly unconscious that within a few years the Democracy has wasted or stolen the whole sinking fund of the State of New York, defrauded the canals of great sums, and plundered the city of New York of nearly a hundred millions of dollars. It is of little consequence to us what opinions so partial a judge may form of our noted politicians, but it is at least instructive to see to what side their sympathy inevitably turns. The *Post* and *Standard* are bitter opponents of common schools in England, the strongest advocates of monarchical and aristocratic principles, hate freedom, and would be glad to see every republican government banished from among men, and they feel instinctively that the Roman Catholic Democrats among us are their natural allies, the common schools their most potent foes.

In a recent article on our national politics (October 2) the *Standard* thus instructs the Roman Catholic Democracy: "It might impeach General Grant," it says, "who has certainly been guilty of violent and lawless usurpations, but one-third of the Senate can acquit him. It might, one would think, paralyze the Federal government by refusing supplies, and with very little risk, since the State governments are competent to keep the peace and defend themselves, the chief use of the army being to oppress them." But that these gentle expedients will be employed the *Standard* has little hope. It trusts only that the next elections may "go against the Republicans," and that "every agent of usurpation, from Grant and Sheridan to Kellogg and his crew, will be restrained by fear of punishment to come." The aim of the Tory writer is evidently to divide once more the Union, to encourage violence at the South and the papal domination at the North, and to wound the republic in some vital or dangerous point. It would be glad to "paralyze" the general government, and invites the Democracy to a new secession. It is curious to remember that just one hundred years ago, when the people were rising against their fanatical oppressors in England, the Tory writers used nearly the same epithets for Otis and Samuel Adams which they now heap upon their successors. In 1768 the English conservatives were anxious (London *Public Advertiser*, November 3, 1768) "to send for these men in order to hang them." They were "incendiaries, fire-brands, and traitors." Dundas in Parliament in 1775 was accustomed to talk contemptuously of "Hancock and his crew," as the *Standard* in 1875 talks of Grant and Sheridan. Samuel Adams and Hancock were excluded from all hope of pardon just before the battle of Bunker Hill; and when the English ministry found that they could not bribe them, they spoke of "taking them off," and the WOODS, KELLYS, and TILDENS of the colonies of that important day commended every reactionary scheme. The same spirit still animates the English conservatives, and the lapse of a century has given them no clearer notion of American politics.

But there are many English liberals who are less obtuse, and some perhaps of their opponents. The London *Hour*, October 4, has a clear review of the condition of the struggle between knowledge and ignorance in our country, suggested by the President's recent speech. It notices that the Roman Catholic Church among us enjoys a degree of liberty unknown elsewhere, and that it has repaid this indulgence by assailing the common schools, the foundation of the republic. "The American," it says, "is tenacious about the common-school system, because it is the foundation of wisdom, the corner-stone of morality, and the sure road to prosperity. This system has become dear to the people," etc. It is well known that the Church of Rome is no friend to common education, and has always frowned upon the cultivation of literature by the masses. "President GRANT," it thinks, "has grown a cubit in stature since he has ranged himself alongside the German Emperor, the King of Italy, the Czar of Russia, and the late Premier of England in defense of the liberty of the mind against the "ignorance, superstition, and ambition" which assail it in its most Jesuitical guise, that is, in the education and training of youth. The battle is never ended. It is the eternal struggle of light with darkness, of good with evil; it is the strife of OROMASDES with ARIEMANOS; but we may hope that in the end light will prevail, and the blessings of "free thought, free speech, free press, free schools, and unfettered religious sentiments will not only pervade the United States, but the whole world." Such a generous appreciation of republican principles makes amends for an infinite amount of Tory dullness, and recalls the eloquent honesty of BURKE and BARRÉ, when a hundred years ago they ventured to defend the passionate longing for liberty of our patriotic ancestors. The struggle begun by OTIS and SAMUEL ADAMS is not yet completed, and foreign barbarism still toils to destroy by subtle intrigue and open violence the fair fabric of freedom that has sprung up from their labors. Another London paper, the *Daily Telegraph*, in an article on the GUIBORD case, says: "The truth is, the Catholic Church has been tempted to commence hostilities with American society too soon. She is beginning to feel that in an Anglo-Saxon republic, surrounded by an atmosphere of free thought, free speech, and untrammeled right of private judgment, she must either reign supreme or run to ruin. The two grand objects now stirring Catholic ambition in the United States of America are, first, to have all Catholic children taken from the public and forced into the parochial schools of the Church, and secondly, to draw from the present education fund raised by the State for support of public seminaries the money wherewith to maintain parochial schools under priestly control. That President GRANT," it adds, "should declare hostility to Vaticanism, that the Democratic party in the State should indicate an intention to bid for the Catholic vote in order to defeat their rivals, who are apparently anti-Catholic, may be the preliminary skirmish shots of a great battle between Rome and Anglo-Saxon republicanism, which must be fought out in the two great divisions of North America."

These extracts show how clearly intelligent Europeans see what so many of our Protestant Democrats and some Republicans refuse to admit—that a foreign Church is already meddling with our politics, and ruling our Democratic politicians by menaces of defeat and bribes of victory. If Cincinnati and Cleveland had not been wiser than their party guides, they must have fallen under the Roman Catholic yoke at the recent election, and the papal priests would have held a real control over one of the most intelligent and powerful States in the Union. And there is no State nor city from ocean to ocean where this active political Church is not laboring by every art to win the ascendency, to thrust its corrupt members or instruments into office, to poison the press by its foreign vices of duplicity and casuistry, to gain political influence by all those shameless expedients with which it has so long afflicted the papal states of Europe. Could all those wicked devices by which the Roman Church has striven to hold the control of the city of New York so successfully for so many years be told to the public, they would win for it the contempt and horror of even the least scrupulous mind. It has fostered peculation, shared the fruits of public robbery, and sustained the robbers in office; it has made the Democratic party a mass of moral decay; has purchased editors, and practiced upon their vices or their errors to terrify them into obedience; has made use in its unhallowed projects of fallen women and erring men; has covered New York with European corruption, and cultivated the vices by which it rose to power. Few, indeed, who have not examined its career can even suspect the extreme moral depravity of its political agents or the base means by which the priests have essayed to continue their control over the press and the society of New York. And yet our Republican politicians are often afraid or unwilling to point out the chief enemy of American institutions. It is plain that this dangerous reticence can continue no longer. We must call upon all honorable and patriotic Roman Catholics—and there are, no doubt, many of these—to withdraw their Church from its mad political career, to separate it from its unholy alliance, and teach it, if possible, modesty and self-restraint. But we must also urge every freeman to come to the rescue of his country, and help to guard it against the fierce aggressions of the foreign priest. In its modern and ultramontane form the Roman Church is the most terrible of all the enemies of knowledge. It has crossed the ocean to crush the elements of progress throughout all the American continent. It will spare no institutions and no government that stands in its way. It uses the dagger in Ecuador, and takes up arms against the civil rulers in Quebec. It is as "destructive to civil society" in 1875 as it appeared to OTIS and ADAMS in 1770. And there is no remedy for our danger, no safety for knowledge and good government, except in a general union of all the nations of the Western continent against the papal faction; no hope for our own free institutions except in the utter overthrow in 1876 of that corrupt Democracy which finds its chief support in the favor of a foreign priest. Already the people begin to rise to defend the principles of the Revolution. In 1876 the Roman Catholic Democracy will perish forever.

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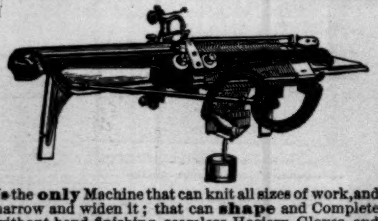

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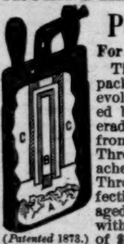

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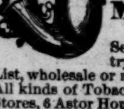

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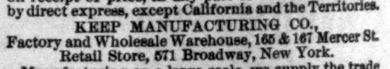

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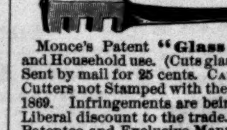

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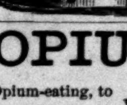

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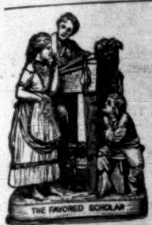

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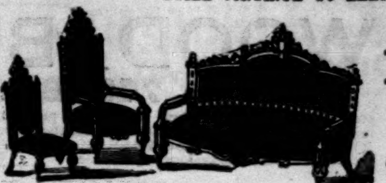

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(From Report of the Proceedings of the Board of Education.)

Detroit, Mich., City Hall, July 12th, 1875.

To the President of the Board of Education:

The Committee on Teachers and course of study, to whom was referred the resolution of Inspector Liggett in reference to the study of the English language in the public schools, have had the same under careful consideration, and beg leave to report as follows:

They find that in our course of study, as at present arranged, English grammar is not introduced until the eighth year, and that previous to this year there is no systematic effort to teach in our schools the art of speaking and writing our language fluently and correctly. This, your committee submit, is a serious fault in the course of study, and especially so in view of the fact that a very large proportion of our pupils leave school before reaching the grade above mentioned, and are therefore deprived of all systematic instruction in this pre-eminently useful branch of elementary instruction.

Many of our best educators urge strong objections against the present cumbrous and intricate methods of teaching this branch of learning, and your committee believe with them that proficiency in it, as usually taught, rarely secures to the student the ability to put an idea of his own into pure and perspicuous English. Your committee believe that elementary text-books not liable to this objection are now attainable, and recommend that such text-books be introduced into the course of study in the fifth grade, to the end that those whose necessities compel them to leave the schools before completing the prescribed course of study may not be deprived of all advantages in this essential and practical part of a common-school education.

JOHN T. LIGGETT,
HENRY PLASS, Jr,
JAMES J. MARTIN.

Accepted and Adopted.

RESOLUTION.

(From Inspector Rumney.)

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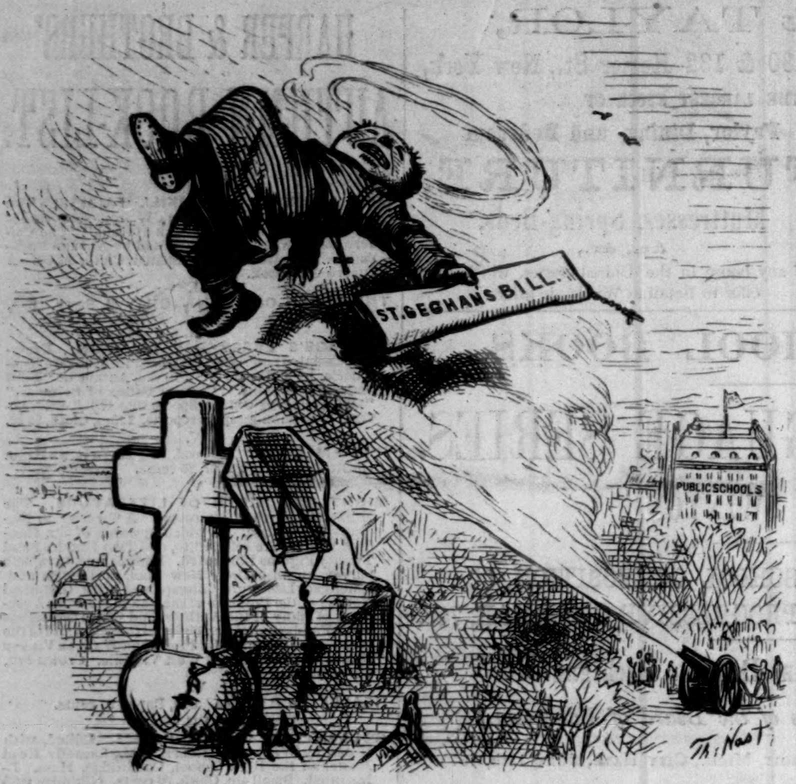

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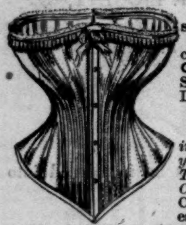

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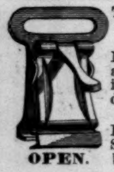

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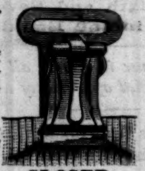

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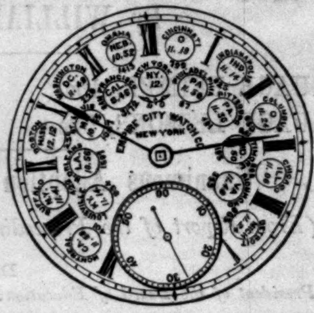

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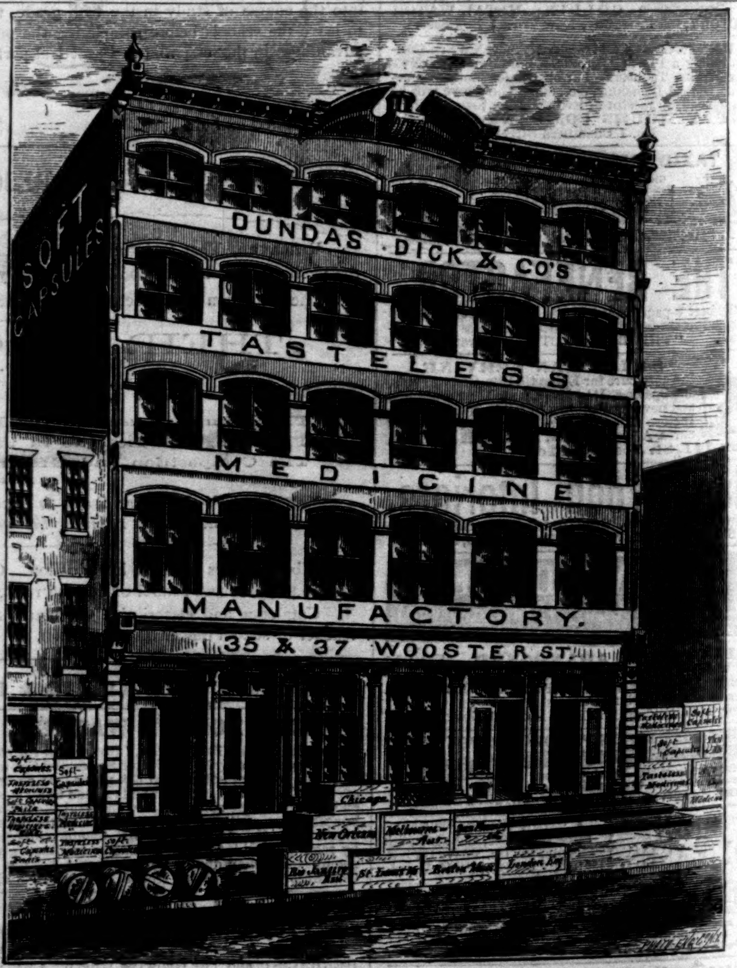

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Peculation Triumphant: being the Record of a Four Years' Campaign against official Malversation in the City of New York, A.D. 1871-75. New York: Polhemus, Printer, 102 Nassau Street. 1875.

The New York City Ring: Its Origin, Maturity, and Fall, discussed in a Reply to the New York Times. By S. J. Tilden. New York: Press of John Polhemus, 102 Nassau Street. 1873.

Charges by Mayor Wickham against the Corporation Counsel of the city of New York; the Corporation Counsel's Answer thereto; the Commentary on the Answer by the Mayor's professional adviser; and the Observations of the Corporation Counsel thereon—as published in the newspapers in that city in January and February, 1875.

Special Message of Governor Tilden to the Legislature of the State of New York on March 19, 1875, upon the subject of canal reform.

Chief Justice Church's interview with a *Tribune* reporter, as published in the *Tribune* of April 2, 1875.

Official record in the *habeas corpus* case of *Lipscomb v. The People, ex rel.* William M. Tweed.

Judgment and opinions of the Court of Appeals in the *habeas corpus* case of William M. Tweed, as reported in the Albany *Argus* of June 16, 1875.

Correspondence between Judge Noah Davis (June 24, 1875) and Mr. Charles O'Conor (June 30, 1875), as published in the morning newspapers of New York city on July 16, 1875.

Interviews with Six Rochester Lawyers, to wit, the Honorable Addison Gardiner (formerly a Judge of the Court of Appeals), Henry R. Selden, Samuel L. Selden (both of them also formerly judges of that court), George F. Danforth, James C. Cochrane, and William F. Cogswell, in which they criticised approvingly the Court of Appeals, as published in the Rochester *Union* of July 20, 1875.

Interviews with Ira Shafer and ex-Judge George M. Curtis, of the Marine Court, in which, in behalf of the bar of New York city, they expressed their concurrence with the Honorable Addison Gardiner, and certified the purity of the Court of Appeals, as reported in the New York *Herald* in July, 1875.

Opinion and order of Judge Charles Donohue, of the Supreme Court, for a bill of particulars in the new civil suit of The People against Tweed, as reported in the newspapers of New York city on July 21, 1875.

Official record of the proceedings upon the motion for said bill of particulars.

Ex-Judge Comstock's letter of July 22, 1875, to the editor of the *Tribune*, in reply to Mr. O'Conor's letter of June 30 to Judge Davis—as published in the *Tribune* of July 24, 1875.

Opinion of Judge Westbrook in the *habeas corpus* case of Aaron Jacobs, as reported in the newspapers of New York city on July 29, 1875.

Ex-Judge Leonard's letter of July 26, 1875, to the editor of the *Tribune*, in aid of ex-Judge Comstock's letter of July 22—as published in the *Tribune* of July 30, 1875.

Opinion of Judge Barrett upon motions of Tweed's counsel to vacate the order of arrest in the new civil suit of The People against him, and for a reduction of his bail, as reported in the newspapers of New York city on July 31, 1875.

"A Judicial Election," illustrated by an editorial article concerning the election of the Court of Appeals in 1870, in the *Nation* of August 12, 1875.

Opinion of the General Term of the Supreme Court, rendered by Judge Daniels, in the *habeas corpus* case of James A. Duffy, as reported in the newspapers of New York city in August, 1875.

Ex-Attorney-General Barlow's letter of August 20, 1875, to the editor of the *Tribune*, upon the Law of the Tweed Case, as published in the *Tribune* of September 7, 1875.

To the Editor of Harper's Weekly:

Sir,—In illustration and in vindication of the right common to every citizen (which has recently been disputed by certain members of the bar of New York) to criticise with perfect freedom the judgments of the Court of Appeals, I have the honor to lay before your readers the following demonstration of the services rendered by that court to the two corrupt associations which are styled the City and Canal Rings. For the purposes of the statement the documents whose titles are hereto prefixed, or which shall be specially cited as I proceed, contain all the needful authentic evidence, or at least distinct references to it. Nevertheless, many of the facts to which I shall call attention have been generally overlooked, or are not generally known. It is my aim to bring these into suitable juxtaposition in accurate detail, omitting none which seem to me likely to elucidate the rest, and stating nothing but the absolute truth, without care for any one whom it hits and hurts. If in this undertaking I shall be successful, little in the way of argument or persuasion will be necessary to point the moral which the exhibition of our highest judicial tribunal in such relations will inculcate. The subject of course involves sketches of the rise and progress of the two Rings, which it will be convenient to discuss in the main separately, although they are connected by as vital a ligature as bound together the Siamese Twins. First, therefore, I ask your consideration of the political condition of the city of New York in the year 1870.

I.—THE CITY RING.

In 1870 the organization which called itself "the Democratic party" really comprised a majority of the qualified voters in this city, though, in some aspects, this fact was of but secondary importance, since the local managers (as will hereafter be seen) could arrange the election returns without reference to truth, and were restrained in the extent of their falsifications only by considerations of expediency. Abraham O. Hall was Mayor, and Richard B. Connolly was Comptroller. William M. Tweed and Peter B. Sweeny were also local office-holders, and transferred themselves from one office to another as convenience dictated. These four men were recognized, in common speech, as co-equally dominant in local affairs and unitedly absolute in the disposition of all municipal jobs, offices, and employments. But the fact was somewhat different. Hall had nominal possession of the largest share of official power; and Connolly also, through his immediate supervision of the municipal finances, seemed to have great weight in affairs; but, except that Connolly was enabled by his office to share in every peculation on the public treasury, those two men were merely clerks. The political astrologers, who read the stars more intelligently than the people at large, hailed Tweed and Sweeny as the true "lords of the ascendant," and styled one of them "Boss," or "Master," complimenting the other, with equal aptitude, with the title of "Brains." These two were the real rulers of the city. It was only through their favor that any man could attain that essential element of success at the polls—a nomination at Tammany Hall; and as to non-elective matters, all appointments and all departmental jobs and employments were distributed by their will. In the main, the local judiciary itself sat on the bench through their agency. Thus in the metropolis they were supreme. But it was necessary as well to the completeness as to the continuance of their power that the Governor and the Legislature of the State, especially the latter, should also be subordinated to them. Otherwise statutes to facilitate their peculations could not be obtained from time to time, as occasion might require; and it even might happen that laws interfering with their projects might be passed by accident or some other unhappy chance. Besides, a means of suppressing dissatisfied home politicians who should attempt to vent their griefs at Albany was indispensable. The immense majorities which the city could roll up, or, more accurately speaking, could return to the State canvassers, rendered any favorite of Tweed and Sweeny very strong in the Democratic State conventions; and in this year, 1870, one of their favorites, John T. Hoffman, sat in the Governor's chair. As to the Legislature, a novel policy had been introduced. Certain Republican politicians were alloted shares of the patronage in the city, and through this sort of amenity, and through a kindred circumstance presently to be noticed—to wit, the direct use of money in bribes—legislation was brought under the control of the Ring. Consequently, whenever discontented Democats sought relief in a change of the laws, Tweed and Sweeny always could command a re-enforcement of Republican legislative votes sufficient to stifle the incipient revolt. Thus, in the year which we are considering, they easily crushed the effort of the so-called "Young Democracy" to modify the city charter. It can not, to be sure, safely be affirmed that the aims of that suddenly improvised faction tended to good; but its failure is worthy of notice as evidence of this harmonious co-operation of Republican legislators with Democratic Ring-leaders. Party spirit, so far as, if ever, it is a virtue, or in any degree practically useful, of course became extinct in such circumstances. The knaves in each party combined to hoodwink their thoughtless or careless associates, and to set an ambush for the whole community. The plunder of the people for the enrichment of the conspirators was the purpose and the result. Nor was the defeat of the "Young Democracy's" charter at the legislative session of 1870 the only public evidence of the supremacy of the City Ring in that year. The Governor to whom I have alluded as a favorite of the Ring—himself a lawyer at the bar of this city, and intimately conversant with all its local matters—designated as judges of the local court of review the very two men (George G. Barnard and Albert Cardozo) whom, without serious contradiction from any quarter, common fame denounced as utterly untrustworthy, and whose removal from office, through the process of impeachment, was one of the early fruits of the reform movement which began in 1871. These men regularly constituted a majority in the General Term, and, once seated, were irremovable for five years. (Laws of 1870, *c.* 408, § 3.) The statute under which Tweed and his associates, among other contemporaneous larcenies, stole the particular $6,000,000 which led to their exposure was then adopted. (*Ib.*, *c.* 382, § 4.) So, also, was the statute under which Thomas C. Fields, the Corporation Attorney, stole at a single stroke $500,000 more. (*Ib.*, *c.* 383, § 7.) "Verily," an impartial observer might have said, "Rogues' Holiday indeed has arrived." And why was this?

WHY WAS THERE NO CHECK OR INTERRUPTION?

Nominally there were two political parties in the State; and if nothing could be expected from their virtue, from their public spirit, or from their party spirit, at least it might have been hoped that through their quarrels honest men would obtain useful revelations. But, for the time at least, no impediment presented itself to the career of the City Ring; and official knavery ran riot, while a phlegmatic acquiescence demoralized the wronged masses of the people. It was not difficult to see in 1870 or in 1871 why the Democratic and Republican parties of the metropolis played into each others' hands. The latter being in a hopeless minority, the knavish managers of its organization actually secured for themselves a larger share of public patronage through the left-handed favor of their Democratic allies, Tweed and Sweeny, than could have resulted from any faithful efforts on their part in the interest of their own party. How the Democratic managers controlled Republican votes in the Legislature was not so clear. For want of perfect knowledge, it was wholly imputed to direct bribery. Tweed and Connolly so represented to their subordinates; and from them the story spread and was generally credited. Probably there was only a portion of truth in it. The main motive of Tweed and Connolly in so representing the fact was to justify their own exactions of heavy tribute from the public spoils. The money was not chiefly needed for legislative bribery. The greater part of it went into the pockets of these managers.

THE KEY TO THE SITUATION.

It is only now, in the year 1875, through the recent detection and exposure of the canal frauds, that the true elements of Tweed's power at the legislative centre and in the State nominating conventions have been ascertained. The swindlers on the canals and the other public works of the State in the interior, belonging as they did in form to both political parties, had their representatives in the Legislature as well as in the political conventions; and the great achievement of the "Boss" and his "Brains" was, as I have before intimated, the establishment of a harmonious co-operation—an *entente cordiale*—between the Canal Ring and the City Ring, or, in other words, between the peculators without distinction of party. Substituting the modern terms of partisan division for those which prevailed in the days of Jefferson, the thieves adopted the sentiment of his first inaugural address:

> "We have called by different names brethren of the same principle [or want of principle]. We are all Republicans; we are all Democrats."

This combination made each band of them irresistible in its own sphere of plunder; and so they will remain, with alternating elevations and depressions of opportunity for peculation, until, as Governor Tilden has said so well in a recent speech, honest men shall unite with equal harmony to put them down.

THE COURT OF APPEALS.

It was during this same Rogues' Holiday of 1870 that the present Court of Appeals—the great court of last resort for this great State of New York—came into being, and its judges were elected. (See Laws of 1870, *cc.* 86, 203.) Having given sagacious attention to the constitution of the local judiciary in the city of New York, it was but natural and logical that the United Rings should pursue the same policy, and intrench themselves in the very heart of our system of government by adjusting to their convenience the supreme judicial power; and they did so. I will consider hereafter how it was done; but it will be useful to premise some facts as to the actual subsequent working of the terrible and elaborate machinery which they thus constructed and set in motion in 1870, and which, running down to the present day in conformity with its original plan and intention, has thus far defeated every attempt to enforce justice in behalf of the tax-ridden people against either the Canal thieves or the City thieves.

DAWN AND DAYLIGHT.

The Combined Peculators certainly had every thing well arranged for their defense when, in 1871, an extraordinary mass of figures was published by the New York *Times* concerning the expenditures of the city. Though it was not very intelligible, yet that publication was intended and adapted to excite a deep suspicion of the villainy which was in progress; and it did so. Soon afterward Mr. Tilden—a life-long Democrat and a strict partisan, who was enjoying the highest distinction among his political associates as the chairman and official organ of their State Central Committee—took open ground against the use to which the organization of his party was perverted by the agents and servants of the two Rings. He had been struggling against it ineffectually for a considerable time; and even now Tweed laughed him to scorn, confronted and substantially defeated him in the State nominating Convention, boldly declared that his constituents approved his own corrupt conduct, and nominated and elected, or returned, himself to the State Senate by an enormous majority.

It was just at this moment that Mind, as represented by Mr. Tilden (in distinction from "Brains," personified by Sweeny), achieved its first victory in the struggle. The mere crude mass of figures which had been published excited, but, as I have said, did not enlighten, the public, nor did it confound Tweed. A day or two, however, before the election in the autumn of 1871, a suit (called the *Ingersoll suit*) was brought by the State against Tweed and Ingersoll and some other confederates for the stolen $6,000,000. To the complaint were annexed schedules prepared by Mr. Tilden, with explanatory affidavits by himself and others, which presented and substantiated so plain a case of theft that Tweed never afterward dared to deny it. Never during the whole two years of his Senatorial term did he presume to take the seat in the Legislature for which he was returned. From the moment he perused Mr. Tilden's statement his ambition was paralyzed. He withdrew at once from open political activity, and contented himself with employing the instruments and avenues of his established power to avoid incarceration and to retain his enormous plunder; and his success before the courts in this design forms an extraordinary chapter in our public history.

THE JUDICIAL FORTIFICATIONS OF THE CITY RING IN THE CIVIL SUITS.

In Mr. O'Conor's letter to Judge Davis the nature, course, and fate of the two test civil suits brought in the name of the State against Tweed and his fellows are thus succinctly stated and described:

> "Six millions of dollars had been literally stolen by means of county bonds issued in the form prescribed by what was called the Special Audit Act of 1870. (See Laws of 1870, p. 878, § 4.) This was made the subject of an action by the State against Tweed, Ingersoll, and others. Another like fraud, perpetrated by one Thomas C. Fields, attorney for the city corporation, and member of Assembly, through an issue of city bonds not authorized by any law, and amounting, with interest, to about $500,000, was prosecuted against that person. This was also in the name of the State. * * *
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> "All now admit that the $6,000,000 theft under the Special Audit Act could not have been sued upon by the city corporation. There was, however, within the city a local entity of very narrow and limited powers, called the county, whose investiture with corporate functions was never needful, and was the result of inadvertence or of some evil design. It had never brought a suit, and it never had been successfully sued. That it should be the plaintiff was a point which, under the circumstances, would naturally have suggested itself to any desperate litigant who had no defense on the merits. It should be added that this very peculiar entity had never been legally entitled to a cent of money or to property of any sort except by some express statutory grant made to it. If it could create a debt, or incur a liability, or be sued, it had no property that could be levied on. It was, however, an official machine put in motion from time to time by special enactment to impose a local tax for some specified use or purpose; and there was in the Special Audit Act, as subsequently modified, an authority to impose such a tax for the repayment of those who should advance money on these Special Audit bonds. That authority was, in fact, irrepealable, for the Supreme Court of the United States, when needful, would compel the county officers to levy the tax. When the theft was perpetrated, and public justice demanded a legal remedy against the thieves, this corporate entity called the county had, in law and in fact, no shadow of concern with the matter, except the liability of its officers, as the State's taxing agents, to be put in motion for the benefit of the bond-holders. If the thieves had repented and redelivered the stolen money to the county officers, no lawful disposition could have been made of it except by the State Legislature. Never in any shape—in substance, in terms, or in intent—had any part of this money been granted to this entity called the county. Raised for no purpose but immediate payment to the fraudulent holders of the false audit certificates, it could not lawfully be applied to any other purpose. The bond-holders were re-imbursable not by the county, not by its people or inhabitants, nor by any one, save and except only the future unknown and as yet unascertainable tax-payers under a levy to be made for this special purpose. It could not be proved that one of these future tax-payers was yet born when the theft took place or when the suit was brought. The only persons injured were this future unknown and unascertainable class. All the judicial opinion ever appealed to, including that of the Court of Appeals itself in this very case, expressly declares that this local entity called the county was not the representative of that class. It seemed to the people's counsel that the State represented them and was the proper plaintiff to sue in their vindication. But in the suit against Tweed and Ingersoll the Court of Appeals (Judge W. F. Allen delivering its judgment) held that the county alone could sue, and allowed Ingersoll's demurrer, thereby discharging him from the suit. A lucid, decisive, and fully reasoned opinion to the contrary was delivered by Judge Rapallo, in which Chief Justice Church concurred. Subsequently to the first argument one of the learned judges departed this life, and, besides a temporary appointee in his place, Judges Folger, Andrews, and Grover concurred with Judge Allen. This constituted a majority, and judgment passed against the State. * * *
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> "This was the peculators' first triumph. The second should also be stated. It was in a case which presented other features, but no complexity. The question on which the Court and the State's advocates differed was simple in the last degree. It will be perfectly intelligible to every tolerably instructed jurist in Britain or America. It is difficult to find an excuse for the party that erred. The material facts can be stated in a few words. An act was passed in 1870 which, as construed by all the courts, authorized Comptroller Connolly to issue bonds of the city corporation for a certain purpose to the extent of $50,000. Connolly issued bonds for ten times the amount, and paid the proceeds to Fields. A suit was brought against the latter by the State for this unlawful disposal of the public moneys. Lawyers will understand the grounds of a difference in the practice from that adopted in the first suit. The city corporation was made a co-defendant with Fields, the complaint alleging that its officers fraudulently colluded with Fields, the receiver, and neglected to prosecute for the money. Judgment passed by default against the city corporation, and a recovery by verdict was had against Fields. On his appeal to the court of last resort, this judgment was reversed. Judge Folger delivered the opinion. It concurs in all the positions of the State's counsel save one. Admitting the original wrong as alleged, admitting that the fraud and collusion of the city officials was fully established for all necessary purposes, and further admitting that the judgment in that case, if permitted to stand, would protect Fields from any claim by the city, he held nevertheless that the State could not sustain its recovery. The same judges who concurred in the *Tweed-Ingersoll case* concurred in this opinion, and made it a judgment. There has been no intention to criticise it. As a judicial and literary performance it is without a blemish deserving serious notice, unless there was error in the conclusion. The point was fully and fairly met and directly decided. Jurists skilled in the common law throughout the world need only to be told that in this State legal and equitable remedies are allowed in the same procedure. They will pronounce upon this decision. It was the second triumph of peculation."

The second of these decisions was pronounced in June, 1874, and circumstances hereafter stated will show that until certain new legislation was obtained in 1875 it brought to a stand-still all effort against the City Ring.

At the outset it could not have been perfectly plain to an ordinary mind that the right to bring suit was in the County, for Judge Rapallo, in a strong and very convincing opinion, written and delivered after a whole year's deliberation, stoutly maintained that it was exclusively in the State, and Chief Judge Church voted with him. That question, however, is not material to my present purpose. That purpose is to show the progress of a combined course of official action effectively operating to screen Tweed and his associates, and to perpetuate the reign of peculation by the as yet unexposed professional politicians in forms slightly modified. A technical conspiracy, an actual "breathing together" by the various officers concerned, or an agreement under hand and seal between them to effect these objects, may not be provable; but a harmonious coincidence of means to such ends is as plainly visible in the facts which have occurred as is the sun at noonday.

THE ADVENT OF MR. O'CONOR.

The right of action was in the State or in the County, unless it was possible to pronounce the theft one of those novel and subtle conceptions against which the law, from some inherent imperfection of its nature, afforded no remedy. If the State had the right, the Attorney-General alone could sue; if the County had the right, the Corporation Counsel alone could sue. For some time prior to October 17, 1871, several eminent citizens urgently importuned the latter to prosecute for the frauds in question. But their importunity was ineffectual. How could it have prevailed? That officer held his appointment from the City Ring itself. The incumbent of the Attorney-General's office at this time (Mr. Marshall B. Champlain) was also subject to the influences of the Ring. Nevertheless a committee of leading citizens, headed by Mr. Edwards Pierrepont, now Attorney-General of the United States (and entitled to the esteem of all his peace-loving countrymen for his recent course upon the requisition for Federal troops in Mississippi), then waited upon the State authorities at Albany, and solicited them to exercise their functions in favor of the people. Strangely enough, it must be confessed, hastily and indiscreetly they now, no doubt, believe, the State officers met the sudden exigency by authorizing Mr. O'Conor to employ the Attorney-General's official power against the peculators as might seem expedient. There had not before been exhibited in any department at the Capitol a disposition to curb fraudulent practices, and it was deemed judicious now to evince it. The step which was taken seemed adequate to the purpose which induced it, for it was likely (as a "tub to the whale") to amuse the public and to diminish clamor. Probably there was no belief at Albany that the Attorney-General or any assistant could by any possibility act independently of the local authorities. One difficulty in this movement, however, which failed to present itself to the governing minds at the Capitol was instantly discerned in New York city. In counsel, no less than in judges, there is sometimes to be found a commendable astuteness, which diligently explores the armory of jurisprudence for the means of striking down an evident fraud; and when either the lawyer or the judge is honest, the search is rarely unsuccessful, for, whatever individuals may be, the Law is not a patron of villainy.

THE SUIT IN THE NAME OF THE COUNTY.

Mr. O'Conor immediately organized in aid of the Attorney-General a bureau composed of himself, Mr. Wheeler H. Peckham, Mr. William M. Evarts, and Mr. James Emott—two Democrats and two Republicans. His aim was to enlist the honest men of both political parties in a crusade against the swindlers of each of them. His real character must have been entirely unknown to the State officers at Albany; but it was perfectly understood by the New York city officers. The latter forthwith took defensive steps. By order of the Mayor (Hall), the very thing was done which had been urged so long in vain. The Mayor himself and Tweed and Connolly were sued in the name of the County. Deceptive, collusive, and fraudulent in point of intent though this measure evidently was, there can be no doubt that it was precisely the right thing to do if the suit was to be honestly and earnestly prosecuted. As is manifest by Judge Rapallo's strong advocacy of the State's right in the Court of Appeals (which was concurred in by Chief Judge Church), the question was, at the worst, doubtful. The true course, then, for an earnest advocate of the County's right was to sue in its name, and actively to prosecute the suit to judgment. It is obvious that the result of this course must have been beneficial. The State suit and the County suit would have proceeded at about equal pace; both would have reached the Court of Appeals at about the same moment; and if either action was maintainable, a judgment in one or the other must have been rendered against Tweed. At the same moment that he escaped from one horn of the dilemma, he must have been transfixed upon the other. By this course all possibility of advantage arising to him from the cavil about the proper party plaintiff would have been obviated. It would have been utterly fruitless. Nay, more. The city courts uniformly held that the County was the right plaintiff. See 13 Abbott (N. S.), 150. So, at the same time that Ingersoll's demurrer in the State suit was sustained, final judgment on the merits against Tweed in the County suit must have been affirmed; and thus the demands of justice would have been enforced and the whole judicial question have been terminated forever. But no design of this kind existed in the local law department.

PORTER AND CURTIS'S DOUBT.

Let us see what was its course. It was precisely such as Tweed himself, or any subtle legal practitioner acting in his behalf, would have dictated. The scheme was that "between two stools justice should fall to the ground." Two eminent counselors at law (one of them Mr. John K. Porter, recently a judge in the Court of Appeals, and the other Mr. George Ticknor Curtis, formerly of Massachusetts) were retained by the Corporation Counsel's office to advise upon the County suit, and, if needful, to assist in its advocacy; and their written opinion was published from that office. Its point was expressed thus hopefully for Tweed: His act, said these gentlemen, "is a fraud or misconduct in respect of which an action must have accrued to the people of the *County*, IF IT BE ACTIONABLE AT ALL." (The italics and small capitals are my own.) The doubt thus ventilated may be deemed to indicate a feeling not very favorable to the public security; but even Tweed's avowed counsel have never yet had the audacity to adopt it. Perhaps it had some color, though it does seem strange that counsel professedly employed in behalf of the people, and paid from the people's treasury, should suggest it in that manner and lend it, at that time and under those circumstances, the sanction of their influential names. When the County suit was begun and this opinion was promulgated, the Corporation Counsel's office appears, under its allegiance to the City Ring, to have regarded its duty as completely fulfilled. It had thereby done all it could do to color Tweed's technical defense. Of course it was bound not to prosecute him to judgment, and it did not. So instead of pressing the prosecution of the public claim against Tweed with the two strings to the people's bow in the way to which they were entitled, they were left to depend on one string only; and to snap that one might be a less strenuous task than to persuade the Court of Appeals to improve the doubt of the legal advisers of the Corporation Counsel into a certainty, by holding that Tweed's thefts were not "actionable at all," which, as has been shown, would have been the great peculator's only subterfuge in that high court, if the County suit had been pursued with the same fidelity and vigor that distinguished the prosecution of the State's suit by Mr. O'Conor and his associates. It appears clearly enough by the correspondence concerning the removal of the Corporation Counsel in 1875 (which I have cited in the caption) that that office remained in the hands of an appointee of the City Ring until after Governor Tilden came into office in the present year. The office of Attorney-General had, however, passed on January 1, 1872, into the hands of General Francis C. Barlow, between whom and Mr. O'Conor and his associates there was entire harmony of purpose and conduct during his whole official term, which expired in January, 1874; and General Barlow was firmly sustained by Governor Dix, who had succeeded Governor Hoffman.

THE CORPORATION COUNSEL.

Such a net-work of events, contrivances, and subterfuges as has been unraveled thus far can be misrepresented easily. Thieves and their confederates rarely hesitate at lying, either straightly or obliquely; and if an attempt shall be made to impeach the narrative, not only may resort be had to direct falsification, but irrelevancies will be thrust in to confuse the public mind. It is difficult by anticipation perfectly to thwart such devices; but something may be done in that direction. It will be said that the first Corporation Counsel offered to receive, in his County suit, the aid of the Attorney-General's assistants. This is true; but it is plain that those gentlemen could not prosecute at the same time the two inconsistent suits of the County and the State, while different and independent persons could easily have done so. When the City Ring's Mayor, just before going out of office, appointed a Republican (Mr. E. Delafield Smith) to the place of Corporation Counsel, the new officer, in a more formal manner, repeated the offer which his predecessor had made. He sent to the State's counsel a written retainer for the County; but the same objection to their acting in the County's suit still existed. Besides, there is an important circumstance which contradicts any idea that the Attorney-General and his assistants would have been permitted to prosecute the County's suit, even if it had been becoming in them to do so and they had attempted the business. It was on June 9, 1874, that the Appeal Judges decided against the State's right of action. By that decision they abolished all the scruples which the Attorney-General's assistants could have had about aiding in the County's suit. Then Mr. Wheeler H. Peckham, the most active of their number, having in his hands the formal retainer (which I have mentioned) from the Corporation Counsel, sought that officer's permission to proceed against Tweed with the County's suit. The permission thus requested was withheld for several months; and at last, in December, 1874, when it was tardily conceded to Mr. Peckham and he was about to act on it, the Corporation Counsel suddenly dismissed from all agency in the suit this "too zealous" assistant and all his associates who had been concerned in behalf of the State, and in the same breath recalled to the advocacy of the suit against Tweed the same two lawyers who were on record before the public as doubting whether Tweed's theft was "actionable at all."

A FEW WORDS WITH SPECIAL REFERENCE TO JOURNALISTS.

These facts should need no comment to produce their proper impression upon the public mind. But in this connection it may not be amiss to suggest an answer to the only argument that is presented by those journals which are manifestly in the interest of the peculators. Mr. O'Conor needs no eulogy, much less any defense, from an inferior in years and learning. In a hale old age, full of useful labors and grateful honors, with a background of illustrious achievements in his profession unsurpassed by any living lawyer, and with a faith in the common-sense of the people which assures him of their ultimate recognition of the truth about any matter that concerns them, he is superior to detraction. So far, therefore, as he is concerned personally there is no need to take notice of the fact that the journals to which I refer, not daring openly to espouse or even to excuse the flagrant crimes of the City Ring, content themselves with sneering at the ill luck of the counsel who have prosecuted the State's actions, and insist that but for their assumed errors justice against Tweed might easily have been done. But so far as concerns him as a representative and trustee of the people of the State, an answer to the preposterous assertion is appropriate, and is perfectly plain. There were but two possible plaintiffs for the remedial action—one the State, the other the County. An action in the name of the State was the only remedy within the reach of Mr. O'Conor and his associates, or under their control, and it can not be denied that they pressed it to a final issue with zeal and with ability. No fault can be found with them except for their supposing, in common with Chief Judge Church and Judge Rapallo, that such an action would lie. But, as I have shown, this error (if it were one) could do no harm; for the men who had control of the other remedy—that is to say, of the action in the name of the County—might have prosecuted it to judgment, and should have done so. If they had been sincere, they would have done so. The State's suit, or the acts of the Attorney-General's assistants, could not bar them. Nor is this an afterthought. At the very beginning of the legal proceedings in 1871 the public prints denounced the course of the Corporation Counsel's office as collusive, and subsequently demanded that it should purge itself of the imputation by pushing the County's suit vigorously to trial; and the complaints in the State's suits also alleged the collusion.

A FINAL COMMENT ON THE INSTITUTION OF THE STATE'S SUIT.

A single remark shall close these details of minute facts, which I have marshaled for the purpose of extricating the truth about the two forms of action from the perplexity in which cross-purposes are disposed to involve it. There was neither professional skill nor ignorance, neither merit nor demerit, developed in bringing the State's suit. There was no alternative. No other remedy was within the power of the Attorney-General or his assistants. No human wisdom could have contrived any other suit than the one which was brought. He must have been dull-pated indeed who could have failed to perceive that in such a suit there was at least a possibility of success; and, as I have already reiterated, the Chief Judge of the Court of Appeals and one of his ablest associates pronounced it not merely feasible, but absolutely right—nay, the only, the exclusive, remedy.

A NEW GOVERNOR, A NEW LAW, AND A NEW ACTION.

This branch of the inquiry, whether or not there was and remains a widely spread and thoroughly organized conspiracy among officers in almost all the departments of government of the city and the State to defeat all laws and all attempted remedies against peculation, of course should not be closed without showing precisely the present condition of the civil proceedings in progress against Tweed. The year 1875 opened with the advent to office of an anti-peculation Governor in the person of Mr. Tilden. As might have been expected, he recommended immediate legislation to reverse the inconvenient doctrine which had been discovered and announced by the Court of Appeals. How inconvenient (to use no stronger adjective) that doctrine was, the following extract from Judge Dillon's leading American Treatise on Municipal Corporations, § 736, will illustrate:

> "Since experience has shown how liable these corporations are to be betrayed by those who have the temporary management of their concerns, it would never do for the courts to hold that relief against illegal acts could *only* be had by an authorized suit brought by and in the name of the corporation."

A statute was speedily enacted by the present Legislature in harmony with the Governor's advice and with the views of the experienced jurist whom I have quoted. (Laws of 1875, *c.* 49.) It authorized the State to maintain actions for such frauds, and accordingly a new suit was instituted by the State against Tweed for the $6,000,000 fraud. In this suit the cavil about the plaintiff's title seems to be at rest, but the defendant's counsel have been quick to resort to another, and in this resort and the success with which it has thus far been attended there is exhibited a brazen-fronted audacity which the judicial annals of any age or country may safely be challenged to exceed.

JUDGE DONOHUE'S ORDER FOR A BILL OF PARTICULARS.

Tweed made what is styled in the practice of this State a "non-enumerated motion," before Judge Donohue, of the Supreme Court, that in this action the State furnish him a bill of particulars. He made no affidavit whatever in support of the motion, except a general formal one that, as advised by counsel, he had a defense on the merits; and the motion was heard on no other evidence than the complaint and affidavits filed by the State. These showed that it was utterly impossible to frame such a bill of particulars as was asked for; by reason, among other things, of the fact that Tweed himself directed and procured "the destruction of all the books, accounts, and papers of every description by which the transactions in question were or could be in any degree evidenced or traced." But nevertheless Judge Donohue ordered that the State serve upon Tweed a bill of particulars, "setting forth, in full and in detail, first, the whole or such parts of and items in each of the bills, accounts, vouchers, or warrants mentioned in the complaint as are claimed to have been false; and second, the whole or such parts of items as are claimed to have been fictitious; and third, the whole or such parts of items as are claimed to have been fraudulent, and setting forth in each case the parts, portions, or items of such bills, accounts, vouchers, or warrants as are claimed to represent supplies, materials, or labor not furnished, giving the description, date, and amount thereof, and such parts, portions, or items as are claimed to have been overcharged, or to be in any other respect false or erroneous, stating the amounts and descriptions of supplies, materials, and labor actually charged and the prices at which they were charged, and also setting forth the prices at which it is claimed they should have been charged."

Thus an insurmountable barrier is sought to be interposed to any further progress of the new suit of the State against Tweed; and if this be law, scarcely any claim can be prosecuted against the official swindlers who constituted the City Ring, for only in the most trivial instances can compliance with such a requisition as Judge Donohue has approved be possible. A suitable caption for the articles in the public journals which announced this decision on July 21, 1875, would have been, "A Judicial Pardon for all the Peculators."

Whether or not it is possible for Tweed forever to pursue this course of legal quibbling and subtlety, and whatever the future may bring forth,* any review of the proceedings by which a civil remedy was sought against the City Ring must close here for the present; and this brings me to another branch of the subject, which includes the course and the fate of the criminal prosecution against Tweed.

THE CRIMINAL PROSECUTION OF TWEED.

In opening this branch of the subject I have recourse again to quotations from Mr. O'Conor's letter to Judge Davis:

> "William M. Tweed was accused of fifty-one misdemeanors in as many separate counts of one and the same indictment. He was tried for them all at once, and convicted of them all. The trial was had in a court of Oyer and Terminer held before Judge Noah Davis, and several successive or accumulative sentences were pronounced against him for these offenses, amounting in the whole to twelve years' imprisonment in the New York Penitentiary, with fines amounting to $12,750.
>
> "For a single offense of this sort the utmost punishment allowed by law is one year's imprisonment and a fine of $250. Tweed spent a year in prison, paid to the proper receiver $250, and then sued out a writ of *habeas corpus*, claiming to be discharged. After decisions against him in the subordinate tribunals, his case came before the Court of Appeals, and, as usual, peculation was triumphant. He was discharged. And here we enter upon a view of the circumstances which give this event a deep interest.
>
> "The judgment of the Court of Appeals was not pronounced on a writ of error brought to review a decision by which Tweed was compelled, against his objection, to acquiesce in a hearing of all these charges at one time. It was a determination that no tribunal in this State has power to try and punish a defendant for several distinct and separate offenses under one indictment. Even though the defendant should acquiesce in the union of several pending accusations against him in one trial, and even though he should prefer that course, as he well might under some circumstances, it is decided, as a matter of jurisdiction, that there must be a separate indictment and trial for each separate offense, which is to receive the full punishment. Nay, more; the settled forms of pleading, which are the best evidence of the common law, allow numerous counts in the same indictment, and require each count to allege a separate and different offense; yet it is held, in effect, by the Court of Appeals, that if by separate pleas to each count of an indictment thus framed a defendant should confess his guilt, still the court would have no jurisdiction to impose any greater amount of punishment than that prescribed for one offense.
>
> "This decision draws after it many serious inconveniences. Some of them may be adverted to. If there was no jurisdiction to adjudge against him confinement beyond the term of one year, the detention of Tweed in the Penitentiary during the last five or six months was altogether unlawful. A civil action *in tort* will lie against every one concerned in it for such damages, remunerative or vindictive, as a jury of twelve men may see fit to award in the exercise of their unlimited discretion. In this predicament are included the warden of the Penitentiary, the judge, the clerk of the court, the counsel who moved for the sentence, and many others. Indictments would lie, and each of these persons might be put to an appeal for Executive clemency as his only relief from a doom to the occupancy of Tweed's vacant cell in the Penitentiary. Had some one not affected by the Tilden animus been nominated and elected to the Governorship after the peculator's first judicial triumph, an event not then deemed impossible, the chance of these well-meaning but misguided delinquents to escape the vengeance of peculators' law might be less perfect than it is as things have turned out. Another circumstance deserves notice. After the full year had elapsed, our venerable Governor Dix, indignant at the favoritism which screened Tweed from the punitory treatment dealt out to common offenders, took measures to compel a more rigorous course. The sharp rebuke contained in his letter of November last will be remembered. Thus it may appear that he also brought himself under the lash of that law now announced by the Court of Appeals."

Mr. O'Conor makes the following further observations in his letter, and in employing the text of it for the present purpose I have taken some liberties with it (to which I trust that he will not object) by omitting every word which possibly could be thought to impugn motive:

> "The notion that the cumulative sentences were an excess of jurisdiction never found place in my mind even for an instant. There does not seem to be any color for it. Had the Court of Appeals entertained this point anew upon a writ of error brought by Tweed, and, after duly reconsidering its former conclusion, reversed it, public justice could not have suffered any material prejudice, nor would crime have been furnished with immunity. The only consequence would have been a new trial conducted in conformity with the altered views, more enlightened than those expressed in *Fisher's case*, which fuller reflection or abler arguments had generated in the minds of the Appeal Judges. But by changing their opinion, and carrying the point to a denial of jurisdiction, they have let in great practical mischiefs. We thus find, as a consequence of the peculator's third triumph in the Court of Appeals, that the Judge [Davis] can escape the loss of his estate in damages only through Tweed's forbearance or that of a partial jury. He, Governor Dix, and nearly all who have been actively moved by hostility to Tweed's peculation, can only avoid taking his place in the Penitentiary through some similar indulgence. This may safely be relied upon; and, therefore, practically the most serious ill result is the complete deliverance of the culprit from any punishment for fifty crimes of which a jury has pronounced him guilty. The judgment stands unreversed and in full force, though the penalties are remitted; and if prosecuted for any of these fifty unpunished delinquencies,

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* Since this letter was written, Judge Donohue's order has been overruled by the unanimous opinion of the General Term of the Supreme Court, consisting of Judges Davis, Daniels, and Brady, whose opinions were pronounced on October 6.

he can now plead, as an effectual bar, his former conviction. The decision that the joinder, now pronounced to be erroneous, affected the jurisdiction, and was, therefore, reviewable on *habeas corpus*, will not be approved by the great body of enlightened jurists whose scrutiny its importance will naturally invite. They will not be apt to recognize in it any other merit than consistency, nor any consistency except that which may be discernible in its similitude to the two former judgments of the same tribunal in the civil cases."

JUDGE ALLEN'S ANTI-CUMULATIVE-SENTENCE OPINION.

At this point I propose to give some space to considerations which touch the question whether this decision of the Court of Appeals is sound law; and in doing so I shall notice only the opinion of Judge Allen, who was the senior expounder of the views of the court. The other opinion, filed by Judge Rapallo, indorses it throughout, and adds nothing new to it.

THE JUDGE'S CORNER-STONE.

The general structure of Judge Allen's opinion certainly is subject to much criticism. It intimates that the maximum penalty prescribed by a statute for a single instance of a crime, as, for example, for a petty larceny of ten dollars, has some such curious operation on the power of a criminal court that even if it were lawful to try, convict, and punish the thief for ten separate larcenies of this kind, at one and the same time and under one indictment containing ten counts, yet the limitation prescribed for a single offense would apply to the sentence; that is to say, though all the ten separate offenses were actually committed and were judicially established in a proper and lawful method, the court still would be without authority to inflict any greater sum of punishment than that prescribed for one of these offenses. In this aspect it also seems to concede that the court is not confined in form to pronouncing a single sentence, and may justly inflict ten successive terms of imprisonment; but it says that in such a proceeding the law requires the whole number of punishments so inflicted for all the offenses not to exceed in the aggregate the limit prescribed for a single offense. For this point (itself sufficient to attain the result arrived at, to wit, Tweed's deliverance from Blackwell's Island and a striped jacket) no decision or dictum of judge, jurisconsult, or law writer is cited. Indeed, it is even admitted that none could be found to cite; not even an "obiter dictum." It was evolved by the learned judge from his own "inner consciousness," just as the German evolved the camel in the old story. And yet, though it proceeds from such a source, surely it is without color of reason. Nothing in the statute looks that way. It is undeniable that the ten full sentences could be pronounced lawfully on ten separate indictments, though they were presented at the same moment and tried in immediate succession on the same day, or met at the same hour by pleas of guilty. What principle of jurisprudence is there from which, without statutory enactment of some sort, a distinction at once so special in its form and so frivolous in its results could, through any effort of a well-regulated logical faculty, be eviscerated?

HIS "OTHER NOTION."

The duties of my life have made me sufficiently familiar with the ordinary course of framing judicial opinions to venture the conjecture that this position of Judge Allen (all-sufficient for the effect he aimed at) was written out as an acceptable corner-stone for the judgment before he adverted to any other position. His other "notion" (if the court will pardon so familiar a word concerning its mental processes), concerning a trial for many delinquencies at one time, whether or not it is sustainable in strictness of law, has at least the merit of resting on a respectable foundation in reason. It certainly has weight, though it may be outweighed by stronger reasons of convenience or expediency; and it will be convenient to state and consider it fully.

Richard Bentley, the illustrious classical scholar and master of Trinity College, said that it was a maxim with him "that no man was ever written out of reputation but by *himself*." But in saying this he merely applied to literature a principle which prevailed long before his day (and ever since) in the English law of judicial evidence. When put on trial before a jury for an alleged delinquency involving penal consequences, the citizen has an undoubted right, if he thinks proper, to exclude any inquiry into his reputation; and it is obvious that this right can not be maintained effectually if the numerous injurious imputations which sometimes are prevalent against an unpopular individual can be pressed against him simultaneously in the shape of formal charges or otherwise, before the same jury, without his assent. This is the only valid objection in principle to trying a man at the same time for any number of offenses which, in the exercise of a reasonable discretion, a court may see can be conveniently tried together. Of course it does not apply to ordinary civil actions, for these are founded on claims of right or demands of money or property in no wise involving the punishment of the defendant for misconduct. But it applies alike to indictments for crime of any grade, and to actions for penalties or forfeitures, whether prosecuted by the government or, under some statute, by the party injured, by a common informer, or in the shape called (mysteriously to laymen) *qui tam*. In all these prosecutions the charge is for a crime or a personal delinquency, and the object is the infliction of punishment. The prosecutor seeks to fasten on the accused an imputation of guilt; his object is punishment; and the effort of the accused in putting himself "on his country"—that is to say, on the jury—for deliverance, is to maintain his innocence. In such a case, says the immemorial common law, the defendant's evil reputation shall not be a sword in the grasp of the prosecutor to prejudice the jury; but, on the other hand, the same venerable code, with equal emphasis, allows the accused to employ his reputation as a shield. "The man of good report" may at his election resort to "reputation" to turn aside the force of inculpatory circumstances offered in evidence against him. It is common practice, and intensely well-established law, that any number of separate and distinct offenses may be presented in one and the same indictment. There can be no mischief in that. The accused may confess his guilt as to all of them, or as to all but one, and even though he deny his guilt *in toto*, he may be willing to have the charges all tried at once. Common-sense shows that to put a man on trial at once for many alleged offenses is no violation of the humane rule referred to, unless the accused objects to the joinder. It may be the innocent man's best policy to meet all his enemies at once. It may not be so easy in any other way to expose their malignity, their multitudinous fabrications, and their combined action. It even may be the only possible method of vindicating his character and saving his liberty, his fortune, and his fame from their machinations. What is so common in criminal practice as a resort by the accused to his good reputation? Yet not a word can be said about common fame except by his consent.

This illustrates sufficiently the proposition that the joinder of different offenses in one trial, like the investigation of character, is an objection which the accused may take or waive, as, in view of his interests, his own judgment and free choice may dictate. The notion that it is absolute, incurable error, though both parties consent to it, is unreasonable enough; that it involves an excess of jurisdiction is preposterous.

THE HABEAS CORPUS POINT.

It may fairly be supposed, from Mr. O'Conor's letter to Judge Davis, that notwithstanding the deliberately pronounced and officially promulgated opinion of the Court of Appeals in *Suydam* v. *Smith*, 52 N. Y., 383 (to which I had the honor to call the attention of the readers of the *Tribune* on August 30), that eminent jurist's views of the law, as expressed in his brief in *Johnson's case* (the brief on which Judge Allen and his brethren propped themselves), are unchanged, and that he thinks it would have been proper for the court to review and reverse its former conclusions in *Fisher's case*, and in *Suydam* v. *Smith*, and grant Tweed a new trial, if Tweed had applied for it. On this point the legal profession throughout the country certainly exhibits a great diversity of opinion, as has been manifested in the countless communications to the press, to advert to no other sources of information. But a consideration of that question is not now material, for Tweed's counsel invented a device which was more effectual than the proper remedy for the error—if it was an error. They sued out a writ of *habeas corpus*. They did not seek a new trial, which scarcely could have aided their client. They sought, and obtained, his final deliverance from the punishment due upon fifty unatoned misdemeanors.

Motives aside, the errors in law, if any, committed by the Court of Appeals in giving this judgment were (1) in holding that it was error to try and punish a man for several misdemeanors under one indictment, accumulating together in one judgment the full punishment prescribed for each; and (2) in holding that this error, assuming it for the present to be an error, affected the jurisdiction, and rendered absolutely void that part of the judgment which sanctioned an imprisonment beyond the period prescribed for a single offense, so that the accused could be discharged on *habeas corpus*. All that is necessary in respect to the first point has been said; and I proceed to consider the second, with which Mr. O'Conor dealt rather summarily in his letter to Judge Davis, and which the profession and the public certainly desire to receive a fuller consideration.

THE COURT OF OYER AND TERMINER.

The Court of Oyer and Terminer, in which the conviction of Tweed took place, is a court of record, and is the highest court in the County of New York of original jurisdiction in criminal cases. Its power extends to the trial of all offenses against the laws, and to the infliction of every grade of punishment which they prescribe for crime, including death or imprisonment for life. The presiding judges are of the highest grade under the bench of the Court of Appeals. Any one of them sitting alone is competent to exercise all the jurisdiction (not appellate) vested in the four great courts of England. It would strike an unlearned person, at first blush, that its commitment of a man to prison for twelve years in execution of its judgment could not be deemed an absolutely void excess of jurisdiction merely on the ground that the court, with his own consent perhaps, tried him for several of his offenses at once, instead of trying him for each of them separately in detail. Certainly, if the thing was wrong, it looks, to laymen at least, extremely like a mere irregularity in procedure, to be remedied by a new trial. But the subject requires a deeper examination than this. It needs to be probed to the bottom to ascertain whether there really is any thing in this second point of the Court of Appeals with which even a Tombs pettifogger, by touching it up with a muddle of citations, could have bamboozled a verdict in favor of his employer, had the determination of it rested with twelve jurors instead of with six judges.

THE POINT DISCUSSED, AND THE COURT OF APPEALS REFUTED.

When Judge Allen's opinion was first promulgated I was managing an important public journal in this city. Anxious as I inevitably was that the course of that journal, in its comments on the case, should be accurate and wise, I sought the views of many leading lawyers, both in this State and elsewhere, upon the reasoning and results of the decision of the court. They generously responded to my requests, and accorded to me opportunities for consultation at the cost to themselves of a considerable sacrifice of valuable time. One of the fruits of this investigation was a criticism so convincing of the instability of the second point of the opinion of the court, that I have since procured a memorandum of it, which I take the responsibility of giving to the public as an exposure of the fallacy and falsity of Judge Allen's reasoning such as rarely has befallen a magistrate of his pretensions. It came to me without a title. I give it the title of

THE DISSENTING OPINION FOR WHICH THE PEOPLE HOPED, BUT HOPED IN VAIN.

"The present *Habeas Corpus* Act was passed prior to 1830, and it has thence hitherto been in undisputed operation. Its validity has been universally recognized by the community, the bar, and the courts. It enacts that the writ shall not issue in favor of 'persons committed or detained by virtue of the final judgment or decree of any *competent tribunal* of civil or criminal jurisdiction, or by virtue of any execution issued upon such judgment or decree.' To intensify this prohibition the act in § 25 expressly provides that the petition for the writ must be verified on oath, and 'must state' that the prisoner 'is not committed or detained by virtue of any such....judgment, decree, or execution.' This most explicit and guarded wording was framed by such learned lawyers as Duer, Spencer, and Butler. The word 'jurisdiction' does not occur except as descriptive of the nature of the courts alluded to: they are of the kind known as judicial. The *tribunal* is required to be a *competent* one. This does not mean that it must have pursued a regular course of action in the particular case. Such a construction of the *Habeas Corpus* Act would in effect confer upon a multitude of petty officers appellate control over the highest judicial tribunals. Will any man of common-sense say that such a mode of review is necessary to public liberty, or within any of the objects ever contemplated at any period in establishing the writ of *habeas corpus?* We are not without light as to the import in this connection of such a term as 'competent tribunal.' We need not look beyond Judge Allen's own citations to find plenty of it. In *Watkins's case*, 3 Peters, 205, reiterating a former judgment of the Supreme Federal tribunal, Chief Justice Marshall defines it as a court 'constituted according to law:' this does not mean 'a court proceeding according to law in the particular case.' The revisers of 1830 were not only experienced lawyers, but elegant scholars. Even in framing a statute such men develop their taste as well as their learning. The idea expressed in this phrase 'competent tribunal' was necessarily repeated; and, as usual with such writers, the language is slightly varied. 'Competent court,' a perfect synonym, occurs in § 40. But again, in § 41, the same repetition being a second time necessary, a still wider variation in mere words occurs. With excellent taste Chief Justice Marshall's definition of a competent tribunal or competent court is now used, to wit, a 'court legally constituted.' Doubtless that very definition was present to the minds of the revisers when framing this admirable statute. To be sure, *Watkins's case*, in the 3d of Peters, had not then been reported; but the same high court, by its most renowned Chief Justice, had enunciated the definition in precisely the same connection many years previously, in *Kempe's Lessee* v. *Kennedy*, 5 Cranch, 186. The court in *Ex parte Lange*, 18 Wallace, 174 (another of Judge Allen's citations), acted on and illustrated this very definition. It is there said that a criminal judgment purporting to be of a high court of record would be wholly and absolutely void 'if rendered when *no court* was in session, and at a time when *no term* was held.'

"Thus we see that the *Habeas Corpus* Act, by a twofold expression of the legislative will, explicitly repels from using it such a person as Tweed was; and again and again, in prescribing the course of action on the writ, in case it should be obtained, this injunction is iterated. It enacts, in § 40, that the court or officer before which or whom the prisoner is brought shall 'forthwith remand' him if it shall appear that he is 'detained in custody....by virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued on such judgment or decree.' The next section draws a most pertinent and illustrative distinction between civil and criminal proceedings. It authorizes relief on *habeas corpus* to any 'prisoner in custody by virtue of *civil* process,' though issuing 'from a court legally constituted,' in certain specially defined cases of default or error in the action of such court; and one of these is the precise error which the Court of Appeals has imputed to the Oyer and Terminer in Tweed's case. It is, 'Where the jurisdiction of such court....has been exceeded either as to matter, place, sum, or person.' Thus we find enacted in respect to *civil cases* an express exception to the general rule before laid down, which is undoubtedly equivalent to a repetitious injunction that this very thing shall not be done in *criminal* cases. Of abundant caution, the next subsequent section provides that 'no court or officer on the return of any *habeas corpus*....shall have power to inquire into the legality or justice of any' such before-mentioned 'judgment, decree, or execution.'

"These provisions were not overlooked by Judge Allen, and he tries his best to argue all of them down, except the 41st section, which allows the scrutiny as to excess in civil cases. That was too hard a nut even for him to crack, and he passes it by without notice. He was evidently conscious of its force, however; for his opinion begins with a lengthy commentary on the writ of *habeas corpus*, which seems to have no other aim than to prove that the *Habeas Corpus* Act, as contained in the Revised Statutes of 1830, is in this important feature unconstitutional and void. He contends that the writ originated in the common law, that as it existed therein it was adopted by the Constitution, and that, until the fundamental law shall be altered, 'cases within the relief afforded by it at common law can not....be placed beyond its reach by legislative action.' He then cites from Sayer, p. 44 (a reporter of whose slight authority you are well aware), an old common-law case looking a little his way. The short and somewhat ludicrous story, in that very inaccurate book, about relief on *habeas corpus* against the infliction by an inferior court of a corporal punishment whimsical in its character, and not within the jurisdiction of any court in any case or under any circumstances, is the only thing referred to by him which in any degree gives color to his views on this point. But that was a case under the undefined common-law writ, and it related to the action of a petty inferior court.

"No lawyer has yet found in the books any common-law case countenancing the notion that the judgment of a high court of record could be thus dealt with. Much less is it possible to prove that the provisions now here cited from the Revised Statutes, and plainly prohibiting the judgment of reversal in Tweed's case, are void. But did Judge Allen mean to say that they were unconstitutional? Undoubtedly the tenor of his opinion is to give that answer to those jurists who, with us, might read them as prohibiting the thing the Court of Appeals was about to do, and which it has done. Let us see what support there is for half-way suggestion.

"There never was any thing about *habeas corpus* in the fundamental law of this State until the Constitution of 1822. That instrument provided in its Seventh Article that 'the privilege of the writ of *habeas corpus* shall not be suspended' unless in specified cases. From early times the writ had been regulated in this State by express legislation; and although the statutes enacted prior to 1822 were in a great measure framed with a view to give efficacy to the writ when issued from chambers by a single judge, yet it was uniformly considered by the bench and the bar that the object was to give the single judge at chambers powers of precisely the same scope as the courts in full term might rightfully exercise at common law or otherwise. This is the tenor of all the learned opinions and animated discussions on the general topic with which our judicial annals are adorned. The latest in this early class of statutes was passed April 21, 1818. (See Laws of that year, p. 293.) There was then no constitutional provision affecting the matter; and in language not less intense, but merely less verbosely explanatory than that employed in the revision of 1830, that act of 1818 expressly commands that the prisoner shall be remanded 'if it shall appear....that he is a convict in execution.' But we need not dwell on the similitude of this earlier act to the revision of 1830. The object of the latter was to define clearly the functions of the writ, and make it uniform in their operation by whatever court or officer it was issued, and whether statute law or common law should be invoked as furnishing principles of decision upon it. As above shown, numerous carefully framed provisions accomplish this result; and finally, in the 73d section it is enacted that 'the provisions of the common law in regard to the writ....are....abrogated, except so much and such parts thereof as may be necessary to carry into effect the provisions *herein* contained, and that the authority of courts and officers to award such writ or to proceed thereon by the common law shall be exercised in conformity to' that statute. The notes of the revisers show their most careful scrutiny and elaboration of the whole subject. Their work had been for seventeen years in full and approved operation when the pre-existing constitutional guarantee of the writ passed away, and the present Constitution reenacted one in the same terms. The writ of *habeas corpus* thus perpetuated by the Constitution of 1847 was surely *the* writ *then* and long previously known, regulated by our statutes, and approved and sanctioned in our daily practice. Surely the office and functions in those statutes, clearly defined, described, and regulated, were the very things guaranteed. Surely it was not the writ of ancient English usage—undefined and unregulated save by arbitrary judicial discretion—that was adopted by the Constitution, and guaranteed to the citizen and to the claimants of public justice. Surely the Constitution did not design to authorize every county judge to turn his back upon our carefully framed statutes, and set up for his guide, in contempt of superior judgments, an imaginary common law rule found in the *Punch*-like English report of *Rex* v. *Collyer*, Sayer, p. 44, Anno Domini 1752. Surely no lawyer could imagine this. And so Judge Allen himself admits; for, after his long and confessedly needless commentary, he says expressly that the *Habeas Corpus* Act, as contained in the Revised Statutes of 1830, 'needs no interpretation, and is in full accord with the common law, and the adjudications both in this country and in England, and with the Constitution.' This being so, why all the palaver about that odd old English case of *Rex* v. *Collyer?* Why the blind and halting suggestions that, if the Legislature has done any thing to prevent the court from discharging Tweed on *habeas corpus*, the act is contrary to that case, and is therefore unconstitutional and void? There is a higgling around corners in all this that is not commendable.

"English decisions, showing the control exercised by the writ of *habeas corpus*, and in actions of trespass and otherwise, over inferior criminal jurisdictions, and their judges or other officers, were not apposite authorities for the guidance of the appeal judges in Tweed's case. The usefully systematic character of the Revised Statutes is apparent in this connection. No exceptions could be taken at the trial of a criminal case in England, or even in our State, at any time prior to 1830. Though the most flagitious injustice should be committed at the trial in admitting or rejecting evidence, in charging the jury, or otherwise, or in trying him against his will for a thousand crimes at once, the accused could have no redress in a court of review. It is true that by the courtesy of the judges or prosecutors, and in sundry informal methods, relief was had against this imperfection of the law; otherwise it would no doubt have been sooner remedied. It would not have been strange if, under this loose system, the *habeas corpus* and other processes should have been from time to time strained far beyond their legitimate functions. But the revisers of 1830, when systematizing the laws generally, accompanied their prudent and judicious regulations of the *habeas corpus* by an enactment that any person accused of crime could take exceptions at the trial according to the practice which had prevailed for centuries in civil cases. Thenceforth the accused could obtain a new trial by writ of error if any injustice were done him. It was in admirable harmony with this enactment to deny a convict under the judgment of a 'competent tribunal' the right to review that judgment summarily by *habeas corpus*. The bill of exceptions and writ of error then accorded to him were precisely the fit means for that purpose. The amplest remedy for any injustice suffered was accorded to him, and, at the same time, an express prohibition prevented any such indecorum and inconvenience as allowing the county judges of Cayuga, Westchester, and Clinton summary appellate jurisdiction by *habeas corpus* over their official superiors. Unless Tweed's case is to become a precedent, they can not hold general jail deliveries and set free every ruffian in our State-prisons in defiance of the deliberate judgments of the highest tribunals.

"In considering the fitness of what was done in Tweed's case, it may be well to turn aside for a moment from statutes and technical points ruled by courts, and with disembarrassed vision to look for a moment, in a general way, at the nature of the *habeas corpus*. Its name is of no moment; that might be altered. The principle of constitutional law, unwritten but deeply seated in British law, and intended to be guaranteed by our Constitutions, is that a prompt judicial inquiry into the cause shall be accorded to any one who is imprisoned. This does not seem adapted to the case of a convict already adjudged to be guilty by the deliberate judgment of a high judicial court of record. If we look to statutes and decisions, the result is the same. By the ancient law the king's high courts could alone give this sort of relief; and as they generally sat only at regular terms, the victims of arbitrary arrest might suffer during the vacations. Hence the English *habeas corpus* acts and ours giving judges in vacation power to issue the writ. The St. 31 Charles II., *c.* 2, however, provided that if a person neglected to apply for two terms, he should not thereafter have this privilege of suing out the writ in vacation; and this restriction was adopted in our law (1 R. L. of 1813, p. 355). Thus the summary character of the remedy was distinctly recognized in the English law and in our State from the beginning. That a man tried and in a high court convicted for an offense involving a long term of imprisonment should go quietly to prison, remain there a whole year, and then raise summarily by *habeas corpus* before some petty local officer the question whether he could lawfully be detained during the residue of the term mentioned in the judgment against him, is a course of proceeding that conflicts strangely with the whole nature and the genius of this writ.

"The old inapplicable case from Sayer is the only one that in any degree countenances Judge Allen's notions; but he has cited others. How far they support him may be judged from those two among them which alone seem relevant. They are certainly entitled to the highest respect.

"The first is *Watkins's case*, 3 Peters's Reports, 200. Watkins was convicted in a Circuit Court for an alleged crime, tried, convicted, and sentenced. He petitioned the Supreme Court of the United States for a writ of *habeas corpus*. His ground of complaint was 'that the indictment charged no offense for which the prisoner was punishable in that [the Circuit] court, or of which that court could take cognizance, and consequently that the proceedings were *coram non judice* and totally void.' This was exactly Tweed's point, only that he admitted that a punishable offense was charged, and that the court had jurisdiction to punish him, but not to the extent that it had gone. Watkins's allegation of nullity was by far the stronger of the two. The court declared itself to be in what Judge Allen deems the strongest attitude: it held that on *habeas corpus* it had the full common-law power unrestrained by any regulative statute; yet the decision was that it could not interfere with the judgment of a duly constituted court of general criminal jurisdiction. Chief Justice Marshall's opinion (p. 203) is very apposite. 'An imprisonment under a judgment can not be unlawful unless that judgment be an absolute nullity, and it is not a nullity if the court has general jurisdiction of the subject, although it should be erroneous. The Circuit Court....is a court of record, having general jurisdiction over criminal cases. An offense cognizable in any court is cognizable in that court. If the offense be punishable by law, that court is competent to inflict the punishment....The decision of this question is the exercise of jurisdiction.' Again, at p. 207: 'The cases are numerous which decide that the judgments of a court of record having general jurisdiction of the subject, although erroneous, are binding until reversed....The judgment of the Circuit Court in a criminal case is of itself evidence of its own legality, and requires for its support no inspection of the indictments on which it is founded. The law trusts that court with the whole subject, and has not confided to this court the power of revising its decisions. We can not *usurp* that power by the instrumentality of the writ of *habeas corpus*. The judgment informs us that the commitment is legal, and with that information it is our duty to be satisfied.' To an argument sustained by authority that a court-martial's jurisdiction may be inquired into, the Chief Justice thus responds at page 209: 'This decision proves only that a court-martial was considered as one of those inferior courts of limited jurisdiction, whose judgments may be questioned collaterally. They are not placed on the same high ground with the judgments of a court of record. The declaration [in the authority cited] that this judgment against a person to whom the jurisdiction of the court could not extend is a nullity, is no authority for inquiring into the judgments of a court of general criminal jurisdiction, and regarding them as nullities, if, in our opinion, the court has misconstrued the law, and has pronounced an offense to be punishable criminally which, as we may think, is not so. Without looking into the indictments under which the prosecution against the petitioner was conducted, we are unanimously of opinion that the judgment of a court of general criminal jurisdiction justifies his imprisonment, and that the writ of *habeas corpus* ought not to be awarded.' This is the very first case cited by Judge Allen. He need have gone no further. It was a case before the highest court in our hemisphere. No restrictions such as appear in our *Habeas Corpus* Act dimmed the lustre of his favorite common law; a like constitutional establishment of the writ existed; the point alleged was the total absence of any crime or punishable offense whatever. Consequently there could not be jurisdiction in the sense which in this connection Judge Allen attaches to that term. Chief Justice Marshall says: Though the law and the fact be so, I have no jurisdiction to review the judgment of a duly constituted court of record of general jurisdiction to which the power of judging has been intrusted. I can not 'usurp it through the instrumentality of a *habeas corpus*.' Surely all this was true of the court to which Tweed's *habeas corpus* was returned. It was in this respect precisely like the Supreme Court of the United States. It had no appellate jurisdiction whatever. Can it be possible that Judge Allen actually read this case of Watkins?

"He cites another and a more recent case in the same high court, which it is equally supposable that he did not read, for, like the *Watkins case*, it seems directly against his conclusion. It is *Ex parte Lange*, in the 18th of Wallace's Reports, 163. The prisoner was convicted in a Circuit Court of the United States for a larceny which, according to law, was punishable by imprisonment not exceeding one year, *or* a fine not exceeding two hundred dollars. He was sentenced to suffer *both* of these inflictions, and on the next day after his commitment in execution he paid the fine. Soon after, and during the term, the court revoked its first judgment, and sentenced the accused anew, but now only for an imprisonment of one year. The power of the court to revoke the former sentence was affirmed, but the Supreme Court held that the imprisonment under the second sentence violated the constitutional exemption from double punishment for the same offense, thus entitling the prisoner to be discharged on *habeas corpus*. The chief difficulty the court encountered in dealing with this case was in the position that the first judgment, not being warranted by law, because excessive and beyond the power or jurisdiction of the court, was absolutely void. This was precisely similar to Tweed's position. The court's answer was as follows (p. 174): 'The argument is plausible, but unsound. The power of the court over that judgment was just the same whether it was void or valid. If the court, for instance, had rendered a judgment for two years' imprisonment, it could, no doubt, on its own motion, have vacated that judgment during the term, and rendered a judgment for one year's imprisonment; or, if no part of the sentence had been executed, it could have rendered a judgment for two hundred dollars' fine after vacating the first. Nor are we prepared to say, if a case could be found where the first sentence was wholly and absolutely void, *as where a judgment was rendered when no court was in session, and at a time when no term was held*—so void that the officer who held the prisoner under it would be liable, or the prisoner at perfect liberty to assert his freedom by force—whether the payment of money or imprisonment under such an order would be a bar to another judgment on the same conviction. On this we have nothing to say, for we have no such case before us. The judgment first rendered, though erroneous, *was not absolutely void. It was rendered by a court which had jurisdiction of the party and of the offense*, on a valid verdict. The error of the court in imposing the two punishments mentioned in the statute, when it had only the alternative of one of them, did not make the judgment wholly void.'

"These decisions do not support, but do actually negative, the proposition that the judgment of a court of record of general criminal jurisdiction can be pronounced void on *habeas corpus* merely because no crime is alleged of which the court has jurisdiction, or a punishment is inflicted which was beyond the measure prescribed by law. They both assert the doctrine that misjudgment in either of these respects is remediable only in a regular course of review by an appellate court. But the controlling authority against the judgment of the Court of Appeals is the *Habeas Corpus* Act itself, which, as Judge Allen himself says, 'needs no interpretation.' In plain and unmistakable terms it forbade any such interference with the judgment of the Oyer and Terminer as the Court of Appeals has perpetrated."

PARTING WORDS ABOUT THE COURT AND THE CITY RING.

Here I well may leave this first branch of the subject. I undertook to demonstrate the services of the Court of Appeals to the City Ring. I have stated the facts, deferring to a later stage of this communication any and all imputation of motives; and upon this statement I submit to impartial consideration the question whether the controlling reason why the thieves who held carnival in the City Hall during the Rogues' Holiday of 1870 have escaped punishment and avoided restitution is not that, in the last resort, they never have failed to find favor with the high court which was elected in the year of their domination.

II.—THE CANAL RING.

Passing to the second branch of the subject, I have to show that the decisions of the present Court of Appeals, in the important cases which have come before it affecting the interests of the now infamous Canal Ring, have, like those in the City Ring cases, been against the welfare of the People. Although it will be needful, of course, to allude to the personal history of the Canal Ring leaders, yet I do not propose to review it with such elaboration as I have bestowed upon the record of their allies, for the stench of it is fresher in the people's nostrils.

THE CONSTITUTIONAL AMENDMENT OF 1854.

The jobbery on the canals and the favoritism of State officers in making the contracts for work and materials attracted so much attention that as long ago as the year 1854 relief was sought against the canal peculators through a constitutional amendment, which occurs in Section 3 of Article 7 in these words:

> "All contracts for work or materials on any canal shall be made with the person who shall offer to do or provide the same at the lowest price, with adequate security for their performance."

The object clearly was to take away from the State officers all mere personal favor or choice as to the persons who should contract to do canal-work, and as to the prices to be paid. It did not prohibit the Canal Commissioners themselves from making repairs, etc., by day's work, or from doing any piece of work "by the job;" but if a contract were made at all, it required that the person and the price should be determined by competition in the open market.

THE ORIGIN OF THE CANAL RING.

The dishonest contractors soon made this prohibition unavailing. They conceived that they could evade the Constitution through the Legislature; and by combination between a few rich contractors effective influence to that end was secured. This was the origin of the Canal Ring, and the beginning of its corrupting influence upon legislation. The members of this powerful organization, in their own names or in those of their so-called "dummies," bid for all the work of magnitude at very low and often nominal prices, and by this device prevented the competition contemplated by the Constitutional amendment. Having thus obtained a contract, they would then procure the passage of a statute increasing those contract prices *ad libitum*. The usual way was for the act to direct the Canal Board to examine the contract and to readjust the prices, though sometimes the Legislature itself ordered the increase directly. At every session a large number of these "relief bills" were passed, and the business of canal contracting became concentrated into a few hands, since no one who did not possess political influence enough thus to change its terms could venture to take a contract. To get one, he would be obliged to underbid the Ring. A few years ago some members of the Canal Board sought means to stop this flood of extravagance. They saw the absurdity of going through the form of fixing the prices by public competition, if these prices were to be disregarded and others fixed at the discretion of the Canal Board or of some other State officer. Finally, two of the "relief acts" were brought before the courts, and proceedings were instituted by the State to procure a judicial determination of the question of their constitutionality.

The proceedings for this purpose were devised by Attorney-General Barlow, who did not shrink from the duty of grappling single-handed with the same combination which now challenges the united powers of the State; and when the obituary of the Canal Ring shall at last be written, the chivalrous attack which that honest public officer directed upon the peculators will be remembered to his everlasting honor. His party, under their malign influence, has dropped his name from its ticket, and elbowed him out of its inner councils; but the day is near at hand when it will eagerly claim credit to itself for the very deeds for which it discarded him.

GEORGE D. LORD'S RELIEF BILL.

One of these acts was chapter 740 of the Laws of 1872. George D. Lord (a son of Senator Jarvis Lord), the same person now under indictment for bribery as a legislator, had obtained, as the lowest bidder, by an assignment from one Skinner, a contract for making certain improvements in Black Rock Harbor. After the work was completed so far as the contractor intended to complete it, one of the usual laws was passed for his "relief." It directed the Canal Board to examine the expenditures made under the contract for improving the canal at Black Rock Harbor; and that, if they should find the expenditures to have exceeded the price paid and allowed for this work, they should allow the difference, so as to reimburse the contractor for the actual cost of the work. Attorney-General Barlow brought a suit to restrain the Canal Board from executing this statute, on the ground that the title did not express the subject of the act, and on the further ground that the Legislature had no power to make these extra allowances. The case in the Court of Appeals, entitled *The People* v. *The Canal Board*, is reported in the 55th volume of the New York Reports at p. 390. The decision was against the State, on the technical point, very ill supported in reason, that the application for restraint was premature.

GEORGE D. LORD'S DUMMY'S RELIEF BILL.

The main question, as also the question of whether these extra allowances were mere gifts, so that a law making them was a private act, was decided in *The People* v. *Dayton*, which is reported in the same volume of the New York Reports at p. 367. In that case Edward W. Williams, a "dummy" of the same Jarvis Lord, had obtained a contract, one item in which was "Bailing and Draining, $3500." By the extraordinary Canal Repair Bill (chapter 767 of the Laws of 1870, p. 1903) the Legislature had directed as follows:

> "The Canal Commissioners are hereby required to change the sum named for removing ice and snow, and for pumping, bailing, draining, removing coffer-dams, in existing contract for deepening Erie Canal from Lyall Street to first lock east of Rochester, including cutting down Genesee River aqueduct, and constructing vertical wall from same to Griffith, and improving entrance to Rochester weigh-lock, to thirteen thousand five hundred dollars, instead of the price named in said contract."

The question involved in both cases was the same; that is, whether the Legislature could interfere with prices after they had been fixed by the constitutional method of public competition. In the one case this was done indirectly, and in the other directly.

THE ARGUMENT AGAINST THE LEGISLATIVE EVASION OF THE CONSTITUTION.

The argument against the constitutionality of such legislation is easily understood. Constitutional amendments and prohibitions must be held to intend some substantial results. Can it be supposed that the only end aimed at was the *form* of a public competition; and that, having ascertained the lowest price at which the work could be done, the State should pay a higher price—a price which might be (and often was) in excess of the highest bid? Is it an object worthy of the highest exercise of sovereignty to enact that, having ascertained the most advantageous price, neither the executive officers of the State nor the Legislature should be under any obligation to conform to this price? Every statutory or constitutional provision should be construed so as to give it some substantial efficacy. But who can suggest the slightest advantage in this constitutional requirement, unless the prices determined by the competition are adhered to? Some reasoners who are subtle to pervert might think that the clause in question does not in express terms forbid raising the prices, or (what is the same thing) forbid giving extra compensation by the Legislature. Just as reasonable would it be to say that there is no express injunction to make the contracts at the lowest prices bid. The language is: "The contract shall be made with the person who shall offer to do the same at the lowest price," etc. No one has ever doubted that it must not only be made with the *person* who makes the lowest bid, but also at the *price* bid by him. This is a necessary implication. The clause would be absurd without it, and surely the implication is equally irresistible that, the contracts being made at the lowest prices, those prices must be adhered to. They are unchangeable, and beyond the power of any body in the State which is subject to the Constitution.

In the case of *The People* v. *Draper*, 15 N. Y., 543, 544, the Court of Appeals says that it is not necessary "that the power must be expressly inhibited, for there are but few positive restraints upon the legislative power contained in the instrument......but the affirmative prescriptions and the general arrangements of the Constitution are far more fruitful of restraints upon the Legislature." And again: "Every positive direction" (that is to say, this direction that contracts shall be made with the lowest bidder) "contains an implication against any thing contrary to it, or which would frustrate or disappoint the purpose of that provision." If there are two bidders for a piece of work (John Doe and Richard Roe), John Doe, if he is the lowest bidder, must have the contract. The Legislature clearly would have no power to award it to Richard Roe. But what is the difference between awarding it to Richard Roe, the highest bidder, and awarding it to John Doe, the lowest bidder, and then increasing his compensation? If this may be done at all, the prices given to John Doe for the work may equal or may exceed those bid by Richard Roe. In the case of Edward W. Williams, to which I have referred, the sum of $13,500, to which the price was raised, was very much higher than the highest bid made for that item of work. And yet the Constitution says expressly that the lowest bidder shall have the work, and, by implication, that the State shall enter into the contract at the lowest prices offered. If the Legislature may pass a special law for a particular case after the work is done, it may pass a general law authorizing the Canal Commissioners to increase the prices, in their discretion, in all cases. If such a law could be passed at all, it could be so at any time. So, immediately after a contract was made, the extraordinary spectacle might be presented of a public competition fixing the lowest prices, immediately followed, before the ink on the draft of the contract was dry, by re-adjustment of the prices at the will of the Commissioners. Any such doctrine is an evasion of the Constitution. It is "a fundamental rule of construction that every law should receive such a construction *as not to elude its force, or render it vain and illusive.*"—Smith's *Commentaries on Constitutional Law*, § 277. And the same author says, in § 283, that where the transaction is a mere trick or device "to elude the Constitution," the courts will declare the law void.

AN APPEAL TO COMMON-SENSE AND COMMON EXPERIENCE.

These fundamental principles indicate the treatment which this flagrant attempt to nullify the constitutional provisions should have received. A simple illustration will bring home to every man the strength of the People's position in these canal cases. If a man were to direct his agent to build a house, and to make a contract for the building with the lowest bidder, and the contract price thus ascertained were $50,000, would he tolerate the payment of $60,000 by the agent? Would he not say at once: "My object in directing the contract to be made with the lowest bidder was to take away from you (the agent) any discretion as to persons and prices. You had no authority to pay one penny more." Surely no man would hesitate to repudiate the payment by his agent of any thing beyond the contract price. And surely these private instructions can not be more imperative or binding than the Constitution.

It can not be said that the latter does not apply to the *Legislature*. The direction is general to all persons whom the sovereign people have power to command. Can the Legislature pass a law saying that contracts shall *not* be made with the lowest bidder, when the Constitution says they shall be? As they can not do this directly, so they can not do it indirectly.

THE OPINION OF THE SUPREME COURT ON THE SUBJECT.

These arguments prevailed until the cases reached the Court of Appeals. Judge Learned, at Special Term, in another case (*The People* v. *Dinsmore*), which involved the same point, held that such legislation was wholly void; and this opinion was followed by him in *The People* v. *Dayton*, and the judgment in that case was affirmed by the General Term. (Judge John M. Parker, to be sure, dissented. He also dissented when the same General Term decided against Tweed.) The cases then came to the Court of Appeals. Like Tweed's *habeas corpus* case, they came there with a decision of three Judges of the Supreme Court (Learned, Boardman, and J. Potter) against the Ring men.

THE EMERGENCY FROM WHICH THE COURT OF APPEALS DELIVERED THE CANAL RING.

Things had come to such a pass that these fraudulent contractors were then menaced with that ruin to which Governor Tilden is now striving to bring them, unless the court of last resort should interfere and overturn the decision of the courts below. Judge Learned had decided, not only that it was the duty of the Canal Board and the auditor to refuse to take steps under authority of these so-called "relief acts," but, also, that all money paid under them in the past was recoverable. This amounted in the aggregate to an enormous sum, and suits brought by Attorney-General Barlow were pending against the most prominent canal contractors, to recover back portions of it. An affirmance of Judge Learned's decision by the Court of Appeals would speedily have overwhelmed these jobbers with ruin; but the Court of Appeals came to their rescue, and reversed the judgment. Judge Andrews wrote the opinion of the court. Although Judge Rapallo appears in the printed report as concurring with Judge Andrews, yet I am informed that in a certificate of the opinion, furnished by the official reporter immediately after the decision, he appears as "not voting."

INCIDENTAL BENEFITS CONFERRED BY THE COURT ON THE RING.

Besides the main question in those cases—that is to say, the question of the power of the Legislature to increase the prices determined by public competition—two other points arose incidentally, which also were decided in favor of the Canal Ring, to the utter destruction of the limitations which the People of New York by their Constitution have sought to put upon extravagance and peculation.

THE "CHANGE OF PLAN" SWINDLE RATIFIED.

In the Williams "dummy" case the work which had been competed for and let was "the deepening the Erie Canal near Rochester, cutting down Genesee River aqueduct, and improving the entrance to Rochester weigh-lock." The maps and plans exhibited at the letting showed only the kinds of materials and labor appropriate for the work thus described; yet in the course of the work the Canal Commissioners pronounced it desirable to demolish and rebuild the piers of a neighboring bridge so as to widen its span, and the Canal Board "changed the plan" so as to include this bridge-work, and directed the engineer in charge to have the work done by the contractors, at prices to be estimated or fixed by the engineer. It is plain that this new piece of work should have been done by the canal officers directly, without making any contract; or else, if a contract were desirable, it should have been let at a public bidding. Changing the bridge was an entirely separate and distinct piece of work from that which the contractor had bid for. The contract did not contain any prices for the kind of work necessary to make this change. Such alterations of the nature of the work, by a "change of plan" after making the contract, have proved to be one of the most prolific methods of swindling. A dam, for example, is advertised to be built of wood. An influential contractor gets the job, by bidding a very low price for the large amount of timber required, and a very high price for some small quantity of stone needed. By a subsequent "change of plan," he is enabled to build the whole dam of stone at these enormous prices. All contracts shall "be made with the lowest bidder," says the Constitution. But here the building of the *stone* dam is never competed for at all. The letting is for a *wooden* dam, and the contract, after the "change of plan," is for a stone dam. It is obvious that under the constitutional provision no substantial change should be permitted after the contract has been made, unless upon a new letting. But the Court of Appeals, in the case just referred to, in effect held that making a contract without any letting at all was a perfectly lawful proceeding; and to-day numerous pieces of work are in course of execution by contract without ever having been let to the lowest bidder. Notably, I am informed, there is a dam near Oswego in process of building in this way by James J. Belden.*

ANOTHER CONSTITUTIONAL PROVISION ANNULLED BY THE COURT.

The following statement will elucidate another point which was incidentally decided in these cases:

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* The "changes of plan" in canal-work from "slope walls" to "vertical walls," which are exposed in the Sixth Report of the Canal Investigating Commission (published since this letter was written), are significant instances in point of the practices thus sanctioned by the Court of Appeals.

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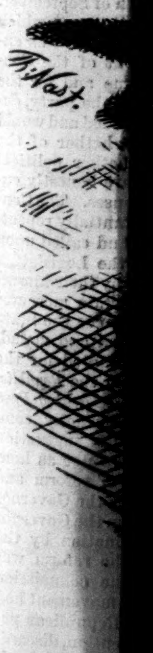

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The Constitution provides, in Section 16 of Article 3, that "no private or local bill which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title." It scarcely will be disputed that a law making a gift of $10,000 to an individual is a private bill. It is said in § 276 of Smith's *Commentaries on Constitutional Law* that a grant to an individual where the whole body politic does not share in the benefit is a grant for a *private* use. And again, in § 813, speaking of the distinction between public and private acts, he says: "The distinction is that when an act concerns the sovereign's revenue for the advantage of the sovereign, it is general [or public], and judicial notice will be taken of it; but it is otherwise when it concerns it only in order to a diminution thereof to the advantage of a particular person."

It was argued on behalf of the People, in these canal cases, that where a man has agreed to do a piece of work for $3500, and has completed it, a payment to him of $13,500 as compensation for it is neither more nor less than a gift, as to the extra $10,000. The State is entitled to the work on the payment of the $3500. If the contractor receives more, it is not of right, but of grace—and that is a gift. The State gets no possible advantage from paying the $10,000 for what already belongs to it. In the language above quoted from Mr. Smith's *Commentaries*, it is a grant for a private use, because the whole body politic does not share in the benefit. The benefit is solely to the contractor. Certainly it is of no benefit to the public to pay $13,500 for the identical work which has already been done for $3500. The difficulty can not be obviated by saying that there is a moral or equitable obligation to help the contractor out of a hard bargain. In the first place, the Constitution forbids this benevolence in the particular case of canal contracts, as has already been explained; and, in the second place, it is notoriously well settled in jurisprudence that moral obligations constitute no sufficient foundation, of themselves, on which to raise a legal or equitable duty. They are only adequate to validate the waiver of a technical defense, as in the case of a debt barred by the statute of limitations. Every business man understands this. Therefore, these extra allowances being merely gifts, and so essentially private grants, it was argued that the laws making them were void, inasmuch as the subject of the law was not expressed in its title.

THE TITLES OF LORD'S RELIEF BILLS.

The law making the increase of $10,000 in the compensation of Williams (Lord's "dummy") was a general canal appropriation act, entitled "An act to authorize a tax of one mill per dollar of valuation of the year 1870 for construction of new work upon and extraordinary repairs of the canals of this State." (Laws of 1870, c. 767.) There surely is no suggestion in this title that the act contained a clause making a gift of $10,000 to any body. The title of the other act involved in this litigation (Laws of 1872, c. 740) is also a flagrant violation of the same constitutional provision in regard to the titles of acts. What would a member of the Legislature think on hearing the title of a bill read by the clerk of the Senate or Assembly as follows: "An act in relation to completing certain work in Black Rock Harbor?" Certainly he would suppose that the bill provided for some labor required to be done for the completion of a great public work. He could have no suspicion that there was not a word in it relating to the completion of a public work, or to any thing else in which the public had an interest. Yet, in fact, the identical bill so entitled was simply an act to make a gift of public moneys to George D. Lord—a person of whom I have already made mention, and of whom the public is likely to hear much more mention made before this canal business is through with. The work had been completed so far as the contractor intended to complete it, and the statute merely directed the Canal Board to examine the expenditures, and, if they should find that those made by the contractor exceeded the contract prices, then to make up the difference to him—in other words, to save George D. Lord, Jarvis Lord's son, harmless from a bad bargain. No greater variance can well be imagined between two things than thus existed between the real subject of the act and the subject expressed in the title. But the Court of Appeals held that these gifts were not private acts, and sustained their validity; and after this decision the Canal Board proceeded to award to George D. Lord, under the statute "in relation to completing certain work in Black Rock Harbor," the sum of $119,000. The highest bid at the time his contract was made fell far short of the sum thus ultimately paid to him.*

A BRIEF SUMMARY OF WHAT THE COURT DID FOR THE RING AND AGAINST THE PEOPLE.

It thus appears that the present Court of Appeals, in a series of cases vitally affecting members of the Canal Ring, has, in favor of this powerful body of politicians and contractors, so construed the Constitution as to render wholly nugatory several of its provisions which were intended to protect the public treasury from the ravages of such peculators. It has construed away the great safeguard against legislative favoritism, to secure which the people went to the pains of a constitutional amendment. It has literally set aside the safeguard of requiring the agents of the State to procure work to be done at the lowest prices instead of bestowing it upon favorites on their own terms. It has also held that under the device of "a change of plan" a contractor who has made the lowest bid for one kind of work may have his contract changed into one for an entirely different kind of work, which has never been submitted to public competition, and the prices of which are fixed by arrangement between the contractor and some obscure engineer. It has also held that gifts out of the public treasury, for which the State receives no possible equivalent, are, when made to canal contractors, such public blessings that they become appropriations for public purposes, and may lawfully be concealed in statutes whose titles disarm scrutiny by implying that the whole body politic is interested in them. And, besides all this, these conclusions have been reached by overruling opposite conclusions arrived at and illustrated by able opinions in the Supreme Court.

PARTING WORDS ABOUT THE COURT AND THE CANAL RING.

Here I leave the second branch of the subject; and upon this bare statement of the facts alone (without imputation of motives) I submit to impartial consideration the question whether the controlling reason why the Canal thieves, who combined with the City thieves to rule and plunder New York, were able to plunge their hands to the elbows into the People's pockets is not that in the last resort they found favor with the high court which was elected to office in the year 1870.

III.—THE QUESTION OF MOTIVE.

In order that the foregoing facts may awaken the public to the dangers which possibly await them from the continuance of the present bench of the Court of Appeals in office during the nine remaining years of the term for which the judges were elected in 1870, it is not necessary to impute corrupt motives to the judiciary, in the ordinary sense of the term corruption. It is enough that a proclivity obtains among them which is detrimental to the fiscal interests of the people, and threatens to be fatal to public justice. Judges who in the days before the civil war made decisions in the interests of slavery may be conceded to have been honest so far as the lower and grosser forms of temptation were concerned, but most of them had grown up in associations, political, social, intellectual, and moral, which rendered it impossible for them to apprehend the merit and force of arguments that assailed the evil order of society which was intrenched behind their judgments. Those honest and intelligent men (if any there are) who consider the decisions of the Court of Appeals in the several City Ring and Canal Ring cases to be sound in law perhaps may feel no uneasiness, however they may regret the results; but, on the other hand, men who believe these judgments to be palpably erroneous must be permitted to doubt, and are naturally inclined to express their doubt, whether the present court of last resort is a safe or suitable repository of the supreme power of arbitrament between human society and its peculators.

THE MOTIVE OF LOCAL INFLUENCE.

Four of the judges who have been elected to the court came from a quarter of the State where the leaders of the Canal Ring long have been prominent in political and social relations, and where their money and patronage long have influenced newspapers, managed conventions, controlled elections, conciliated the bar, promoted business, and given color to the personal intercourse of the community. It should not be surprising if jurists and politicians, developing under such influences, insensibly come to regard as normal and natural the tone of the quarter in which they live.

THE MOTIVE OF PREVIOUS PERSONAL ASSOCIATIONS.

Let us not, in self-conceit, ignore the fact that all men are more or less chameleons. A lawyer (without considering the professional antecedents of the present appeal judges, take, for instance, one of the Six Rochester Lawyers whose opinions I have referred to in the caption) who long has been the counsel of canal contractors, perhaps the draughtsman of a score of "relief acts," or the paid agent to urge them upon the Legislature and conduct the proceedings under them before the Canal Board, very reasonably may have come to believe in their legality. Surely a judge who, as a member of the Canal Board before his elevation to the bench, repeatedly voted for awards of "additional compensation" to members of the Canal Ring, may, according to the common lot of humanity, have been "impressible," like his fellow-men; and when the contractors who argue to his judicial consideration afterward the legality of precisely similar awards are his life-long friends, were his former clients, and were also his political supporters for nomination and election to the bench, there is a combination of circumstances which well may be supposed to exercise a pernicious influence upon him, and must incline men who believe that the canal decisions of the present Court of Appeals are palpably unsound to venture to inquire whether they may not have been made under the pressure of such an influence.

THE RIGHT OF FREE INQUIRY.

The Canal suits (to say nothing of the Tweed suits) were pre-eminently cases in which the decisions, one way or the other, depended upon the question whether the appeal judges were eager to construe the Constitution strictly against extravagance and the arts by which the public always "get the worst of it," or were inclined to looser views. Ex-Judge Comstock, whose experience on the bench and at the bar of the Court of Appeals qualifies him so thoroughly to understand how this is, has vindicated admirably the right of the people to criticise the judiciary, in his pungent declaration, in a recent famous case, that "we have passed beyond the period when judges are supposed incapable of doing wrong, or may do as they please without remedy." "They are now, at least, supposed to be like other men, neither better nor worse," said that fearless jurist, in the same connection, making no distinction between criticising judges of the inferior courts and the bench of the court of last resort.

NO EXEMPTION FOR ANY COURT.

But when the judgment of the Court of Appeals in the Tweed *habeas corpus* case was promulgated, the correspondence between Judge Davis and Mr. O'Conor brought its merits before the public in a tone of criticism which certainly did not meet with universal approbation, although Ex-Judge Comstock's terse sentences were still ringing in the popular ear. Immunity from censure was claimed for the appeal judges as distinguished from other judges—for instance, from Judge Davis—and especially from that form of censure which impeaches motive. How far the claim can be admitted is a proper subject for consideration.

There is no other remedy for malpractice on the part of this high tribunal than impeachment or a change of the Constitution; nor can either of these be obtained, if occasion arises, except by arousing popular indignation against the offending judges. An appeal to the citizens at large is the only appeal that can be taken from their judgments. If resort can not be had to this, then blind submission and passive obedience are the citizens' duty. Such can not be the case. It stands to reason that just criticism or imputations founded in truth must be proper, unless some reason in good policy or sound morals can be shown for acquiescing in judicial abuses. That false imputations and illiberal criticisms are censurable, no man will deny. But there can be nothing so sacred in office as to enjoin submission to judicial delinquency. It can not be true that, in order to preserve a blind reverence for the bench, the people at large should be left in ignorance of official defaults by which their rights and interests are sacrificed. There is an early and sacred lesson of the rights of the people to criticise their judges, written in 1 Samuel, viii. 7, for the instruction and guidance of all God's people, simple or gentle. When Samuel was old, he made his sons judges over Israel, and they, under influences the meanest and from motives the most corrupt, "turned aside and perverted judgment," and the people made a public clamor. "And the Lord said unto Samuel, '*Hearken unto the voice of the people in all that they say unto thee.*'"

THE RESULTS OF THEMSELVES JUSTIFY SUSPICION.

The results invariably favorable to the City and Canal peculators, in all actions, civil or criminal, between them and the public, justify suspicion; and that feeling must ripen into condemnation in the mind of every man who, on a careful review of the decisions, finds them not only contrary to established principles, but argued for by the judges in precisely the style of reasoning usually employed in favor of the professional thief by his hireling advocate. It is reasonable to submit to the public the question whether the two opinions of Judge Allen in the City Ring suits, and the opinion of Judge Andrews in the Canal Ring suit, and especially the former, do not, upon impartial scrutiny, seem to be the opinions of men who have no stable moral convictions, and are capable of preaching with equal force or imbecility on any side of any question. Ought a censor, then, to impeach their motives? Certainly not even then, unless known facts discredit them; and this brings us to the inquiry, Are evil motives justly imputable? If their decisions are plainly erroneous in the degree alleged, that fact is certainly some evidence that, like the judges condemned in Holy Writ, they willfully "perverted judgment." It is properly a first step in the argument; for if they decided correctly, their motives could not properly be impugned. But there is other evidence bearing on the point of motive.

TWEED'S FRAUDULENT ELECTION RETURNS.

It has been shown, in the discussion of the decisions in the City Ring cases, how that Ring established an alliance with the Canal swindlers; and allusion has been made to the fact that the present Court of Appeals was constituted by popular election during the Rogues' Holiday of 1870, when the Combined Villains were supreme in the Legislature and in the nominating conventions of both political parties. Allusion has also been made to the fact that if the Rings had not absolute control over the electors, or even the ballots, they nevertheless could manipulate the returns to suit their wishes or serve their convenience. The editorial article in the *Nation* to which reference is made in the caption proves by moral evidence irresistible in its character that great batches of votes were returned from this city in 1870 in favor of the two Republican judges who were counted in, which never could have been cast for them. The places from which these returns emanated clearly indicate Tweed's handiwork in framing them; and it is manifest on the face of the documents, without other proof or explanation, that one of these judges owes his seat to this vile falsification, while there is little reason to doubt that the other is in a like predicament.

THE BONDS THAT BIND A JUDGE WHO SITS BY SUCH A TENURE.

Two of the seven members of the bench, it thus appears, there is good reason to believe were not only constituted by the Combined Rings, but constituted so as always to be absolutely under their control. A judge can not be a free agent who is at the mercy of his maker. If a fraudulently returned judge should dare to disobey orders, or in any vital matter injure his creators, the base tools who fabricated the false returns could in an instant be let loose upon him to his inevitable destruction.

TWO REPUBLICANS SECURED, AND TWO DEMOCRATS NEEDED BESIDES.

But two out of seven were not enough for the Rings. Two, at least, of the Democratic candidates besides were needful to their domination of the court. The necessities of self-defense had made them intensely, though sometimes covertly, hostile to Mr. Tilden long before 1870. Before that year the conflict between him and the City Ring had already begun within the Democratic councils, and his prospective career and presumable proclivities had plainly indicated the aspirant to executive honors in the State, and perhaps the nation. Here was their opportunity. The selection for conspicuous judicial station of two of his rivals was their game; and they played it.

THE NEED SUPPLIED.

The Democratic nominating Convention was managed into putting on its ticket two judicial candidates who resided upon canal lines and always were notorious favorites of the Canal Ring. These two men stood in near relations of consanguinity, and one of them aspired to be Governor of New York, and the other was deeply interested in the success of that aspiration, to promote his own chances to control the voice of the State in favor of his own nomination as the Democratic candidate for President. I am no partisan of their Democratic adversary; what little I could do in the political campaign of 1874 was done to promote the re-election of his opponent, Governor Dix; but I have been in a position to observe with some care and impartiality this intestine strife between Mr. Tilden and the worst elements of his party, and to comprehend the bitterness of the animosities which are excited against him within the ranks of his own political associates.

A COMPROMISED MAJORITY OF THE COURT.

Thus, in 1874, when the City Ring cases lay in the Court of Appeals, but as yet were undecided, Tweed and his confederates literally owned two of the judges, and two others were deeply interested by personal ambition to conciliate the Rings. Without any closer inspection or analysis, here is a compromised majority of the court; and in a court so ill constructed as this one a majority fully committed to a given policy always can suppress a minority and reduce it to acquiescence, unless it possesses a rare measure of personal combativeness and mental strength.

SUPPRESSION AND CONFORMITY.

This course of suppression is exemplified in the progress of the cases against Tweed. Judge Allen's roundabout harangue in the first of the three civil cases, called the *Ingersoll case*, concludes with an express declaration that the court had formed no opinion, and did not intend to decide what might be the result in a case where the local corporation was made a defendant and collusion was established against it. "It is not intended," he said, "to deny that a case may be made in which the Attorney-General may, in the name of the People, institute and maintain an action against a wrong-doer, and the public corporation whose rights have been invaded or threatened, and the governing body of such corporation, to enforce a right, or redress a wrong, or prevent a breach of trust, where the governing body is faithless to its trust or a party to the wrong." (See *The People* v. *Ingersoll*, 58 N. Y., 38.) Nevertheless, very soon afterward, when precisely such a case arose in the suit against Fields, his learned associate, Judge Folger, who alone spoke for the court, announced that although nothing of the kind was intended, yet the court had actually decided the point in the first case, and so it was settled upon authority. "Notwithstanding," said he, "the caution of the court in its reference to the question now under consideration, in disposing of the *Ingersoll case*, we can not but regard the decision in that case, and the reasons upon which it went, as decisive of the present question." (See *The People* v. *Fields*, 58 N. Y., 513.)

THE JUDICIAL CANDIDATE FOR GOVERNOR.

It was very soon after these two decisions that the candidacy of Judge Allen as the favorite of the Rings for the Democratic nomination for Governor was ventilated. The impossibility of reconciling the decisions, and still more the opinions, of the court with any thing that looked like proper perceptions of law and justice required but this clew to motive in order to fire the indignation of any honest man who understood the subject; and what happened was only to be expected, that several of the prosecutors of the Ring suits displayed with great frankness and freedom their intense reprobation of any such scheme to ratify the iniquitous judgments by an expression of popular favor toward the men who pronounced them.

MR. O'CONOR HAS A WORD TO SAY ON THE SUBJECT.

How direct and thorough was Mr. O'Conor's denunciation of the project of nominating Judge Allen, and how earnest was his recommendation that the nomination should be conferred upon Mr. Tilden, as the Democratic representative of the opposition to the Rings and all their servants on or off the bench, may be gathered from the following extract from the narrative of a skillful "interviewer" of that gentleman about this time, which was printed in the *Herald*, and is a pretty faithful report of expressions freely used by him and others, that were duly conveyed to the ears of Judge Allen and his judicial brethren:

> "Mr. O'Conor said that he took a warm interest in the present canvass, and warmly advocated Mr. Til-

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* The iniquity of this transaction is fully exposed in the Seventh Report of the Canal Investigating Commission, which has been published since this letter was written.

> den's nomination as the Democratic candidate for Governor. He had been actively engaged with Mr. Tilden in prosecuting the reform measures, and he could vouch for his unequaled energy and ingenuity in that direction. He had been in opposition to Mr. Tilden and to those who were called 'war Democrats,' on questions of Federal politics, ever since the Free-soil movement originated. They had, however, acted together in the formation of the Constitution of 1846, especially in maturing the provisions regulating monopolies.... He regretted with Mr. Tilden that they had been such cowards as not to go more radically into the prohibition of those evils. He was opposed to the Legislature granting any special charters, not alone irrevocable, but repealable. He had acted with Mr. Tilden in the prosecution of the Ring suits, in which his (Mr. Tilden's) services were invaluable. In regard to the decision of the Court of Appeals in the suit against Tweed, Connolly, and the other Ring delinquents (adverse to the claim of the State acting on the part of the city for $6,000,000), Mr. O'Conor expressed his satisfaction at the decision. [The grounds of this "satisfaction" appear hereafter.] He did not regret the result. The assertion that the failure of the suit was chargeable upon himself and Tilden merely amused him. It was quite original to have Tilden arraigned as the thief, instead of Tweed. He accepted cheerfully that mysterious provision of the divine law which permitted evil that good might come. This decision was far more important than those who made and procured it had any conception. The recovery of the $6,000,000 might so far have helped Green (the Comptroller); but far greater and more valuable consequences will come from the total loss of the money. That loss, he now thought, was certain, the bail being dissolved, and the suit transferred to a channel which promised nothing but failure from the first. But the record, and the discussion which must arise, will lead to momentous results. Already the judges, the Court of Appeals, and the cases before them, have become the current stock of the political market. The flagging temper of the public had needed some stimulus, and this decision furnished it abundantly. The technical view of the case on which the decision was based must resolve itself in the popular mind into a simple statement of the facts. Tweed and company were sued for $6,000,000 of this stolen money. They offered, in a writing in his (Mr. O'Conor's) possession, to restore $3,000,000 on conditions which public justice would not admit. In view of the flagrant character of the crime, as well as the conceded and adjudicated record of the facts, *there can be no toleration for this decision of the Court of Appeals. It is notorious that these proceedings have already controlled nominations for even the highest offices in the land; and it appears, from the stand taken by some of the judges, that they see similar opportunities presented by their course. But the Presidency, the Senatorship, or the Governorship may be promised them, and yet they will find the people slow to make good delivery on such contracts.* Mr. O'Conor *saw in the discussion now initiated about this nomination of* Tilden *the direct result of the decision in the* Tweed *suit, and a hotter strife will yet follow.* There will, he said, be an uprising of public sentiment which would vindicate Mr. Tilden by his election as Governor, and thereby more firmly secure the results of good government."

THE FIRST EFFECT: AN INEFFECTUAL SUBSTITUTION.

This forensic impeachment of the court had two effects. First, it frightened Judge Allen from the canvass for the nomination for Governor, after a pitiful effort on his part to get rid of Mr. Tilden in favor of his (Allen's) cousin, the Chief Judge Church, who may have been supposed, at this stage of the business, to be a safer prospective candidate, as he had given a judicial vote against the City Ring—a vote, however, which, under the circumstances, was as harmless to Tweed as it was useless to justice or the people.

AN INTERPRETATION OF DEMOCRATIC POLITICAL HISTORY.

In view of what has since happened or been revealed, it is interesting to read and interpret in the light of September, 1875, the following Associated Press dispatch, which appeared in the New York journals of September 10, 1874:

> "Albany, N. Y., *Sept.* 9, 1874.
>
> "Yesterday a number of Democrats from New York and the west met at the Delavan House, to discuss the make-up of their State ticket; and, after much talk, it became the unanimous expression of those present that Sanford E. Church must submit to the necessities of his party and accept the nomination. Of the correspondence that transpired, the following has been secured. It will be noticed that the memorandum obtained from Judge Church is written in the third person:
>
> "'Albany, *Sept.* 8, 1874.
>
> "'*Hon. William F. Allen:*
>
> "'Dear Sir,—Desirous of promoting harmony in the Democratic party of this State, and concentrating all its strength upon the enemies of good government, I have taken the liberty, with the concurrence of friends, to consult with several gentlemen whose names have been mentioned in connection with the office of Governor, and to suggest that the interests of the party will be advanced by their withdrawal from the preliminary canvass in favor of Hon. Sanford E. Church. On Saturday last I had the pleasure of meeting Judge Church at his residence, and he consented to place in my keeping a memorandum stating his position, which I am permitted to show you, and a copy of which I inclose. Hon. Samuel J. Tilden telegraphed that he will be here this afternoon. All other candidates heartily accept the proposition. Awaiting your reply, I am, sincerely yours,
>
> "'Joseph Warren.'"
>
> *The Memorandum.*
>
> "'He'" (Judge Church) "'has declined unqualifiedly, and, so far as mere personal considerations are concerned, we can not blame him. He would not and ought not to be a candidate against any one who has been named in connection with the office, either one of whom he regarded as eminently fit for the position; but if, notwithstanding, the Convention, with the cordial concurrence of all the candidates of the party, demand he change his present position for that of Governor, we do not see that he can refuse.'
>
> "'Albany, *Sept.* 8, 1874.
>
> "'*Joseph Warren, Esq.:*
>
> "'Sir,—I am in receipt of your favor of this morning, and hasten to say that I have at no time been desirous of the nomination of Governor, preferring greatly to remain in the position in which the electors of the State have placed me, but have said, at the instance of friends, that if nominated to the office named, I would not decline. It gives me great pleasure to acquiesce in your suggestion. And I do so cordially and cheerfully. I presume that all the gentlemen who have been named as candidates for the office of Governor occupy the same position, and will consent as readily as I do to the withdrawal of their names, with the view of the unanimous nomination of Chief Judge Church. He could not, I think, decline a nomination thus tendered, and the people would heartily unite upon and triumphantly elect him. Very respectfully, your obedient servant, W. F. Allen.'"

The Convention met on September 16, and Mr. Tilden was "triumphantly" nominated the next day.

THE SECOND EFFECT: A JUDICIAL CONSOLIDATION.

The other effect serves even more distinctly to prove the evil constitution of the court. Most readers will remember the policy of the fox in the fable who had lost his tail. It became the policy of the judicial majority to bring all their associates into a similar condition to their own; and this policy was not more obvious than the argument was easy. It ran somewhat thus: "Here is an attack not merely on one or more of the judges, but upon the court itself. The court must defend itself against all such outside assaults." And so far as the judges could effect a defense through unitedly standing by one another, it has since been done. Mated substantially for life, how could the minority resist? Besides, the minority was not strong. In a war of this sort, one judge who had boldly denounced the first judgment soon must have found himself alone. Could the cousin who had given a silent vote fail in the emergency to stand by his cousin who had given the leading pernicious opinion and was the principal object of criticism?

THE COUSIN'S WHISTLE.

There were, to be sure, some restraining influences—a consciousness of what was needful for self-respect; a perception of what was desirable for the public welfare; possibly even a doubt of the personal expediency of following up the path on which the majority of the court had entered—but "the cousin's whistle" was, after all, as persuasive to the Chief Judge as it was to Andrea's wife in Browning's poem, and so he soon was found reviling to a newspaper "interviewer" the Attorney-General who had sued the Canal Ring, and cracking familiarly against that honest officer the stale jokes of his judicial associates, on what I trust that by this time he finds to be the very mistaken notion that there is no appeal from the Court of Appeals.

THE CHIEF JUDGE SEEKS AN "INTERVIEW."

Here is a specimen of the conversation, entered into by Chief Judge Church (be it remembered, for the express purpose of its publication), as reported in the *Tribune* of April 2, 1875:

> "Correspondent. 'Have you noticed some newspaper attacks on the Court of Appeals and its judges?'
>
> "Chief Judge Church. 'Yes, I have.'
>
> "Correspondent. 'Have you any idea who instigated it?'
>
> "Chief Judge Church. 'Yes; it was Francis C. Barlow.'
>
> "Correspondent. 'Are you willing to state how you ascertained this?'
>
> "Chief Judge Church. 'Yes, from the writer; not directly, but through another person.'
>
> "Correspondent. 'Have you any idea what induced this attack?'
>
> "Chief Judge Church. 'I can not of course know the motive. I can only infer that he has taken advantage of the excitement on canal matters to vent his spleen against the court because he has happened to be unfortunate in his private and public litigations.'
>
> "Correspondent. 'What do you think of it?'
>
> "Chief Judge Church. 'It reminds me of my brother Grover's remark, which he often jocosely makes. He says that, up in Alleghany, when a lawyer gets beaten in court he has two remedies. One is to go down to the tavern and swear at the court, and the other is to take an appeal. As there is *no appeal from this court*, Mr. Barlow seems to have taken his only remedy.'"

A UNANIMOUS BENCH.

"Brother Grover's remark" seems, indeed, as one of the evening journals that day observed, to have made a very deep impression on the mind of the Chief Judge, as appears by his counter-application of it in going down to the newspaper-office and swearing at the ex-Attorney-General. Upon the harmony of the performance with the functions and duties of his high office I make no further comment. When Tweed's next case—the *habeas corpus* case—came up, he trusted to his expressed notion of his court's omnipotence, responded to "the cousin's whistle," and went with his associates into the war against outside criticism. The single protestant was not strong enough to go to Coventry alone, and the single new member afterward chosen fell into the path beaten by his associates, just as bisons follow one another on a trail to water. The occupation even of a judge of the great court of this great State manifestly is not exempt from the aphorism of Edmund Burke, that "the dignity of every occupation wholly depends upon the quantity and the kind of virtue that may be exerted in it."

IV.—THE QUESTION OF REMEDY.

Finally, the question of remedy. The course of the Court of Appeals justifies a belief that the nominations and returns for a majority of its judges were arranged in the year 1870 by precisely the same influences which at the same moment controlled the selection of a similar majority of the local bench of this city. The fruits of the latter contrivance were happily brought to a speedy maturity by impeachment. But an amendment of the Constitution probably is the only resource of the people for escape from the domination of the former.

A FALSE ISSUE.

It is manifest to laymen as well as to lawyers that the recent developments concerning the present Court of Appeals and its decisions in these Ring cases have excited a serious distrust of our elective judiciary system—so serious that, were the will of the people of the State now to be expressed upon the question whether their great judicial offices should be filled by appointment, it is possible that the vote of November, 1873, would be reversed. But this, I think, is a false issue, and in order to ascertain the reason or unreason of this revulsion of popular sentiment, let us briefly consider the main arguments for and against the two opposite practices—of election of judges for a term of years, and of their appointment by the Executive during good behavior—which, in consideration of the leading States where they are respectively maintained, we may aptly style (1) the New York system, and (2) the Massachusetts system. The conflict is not of principle, but solely of method. All the disputants agree that the true object is to get and to keep the best judges for the work of judges.

THE TEST OF THE METHOD OF CONSTITUTING THE JUDICIARY.

As regards the mode of choice, the advocates of a popular election contend that the people are as competent to select a judge themselves as to elect a Governor to appoint a judge in their behalf; while the advocates of the system of appointment contend that the essential qualifications of a good judge are so peculiar that the people at large are not so competent as their agent, the Governor, to make the best selection, especially in consideration of the ordinary control of political nominations by the caucus. In all the debates upon the question, in the various States, I know of no more concise expression of the true test for determining what offices—whether judicial or otherwise — the public good requires to be filled by a direct election of the people, and what should be filled by the appointment of agents, than the following paragraph from Rufus Choate's speech of July 14, 1853, in the Massachusetts Constitutional Convention of that year:

> "If the nature of the office be such, the qualifications which it demands, and the stage on which they are to be displayed be such, that the people can judge of those qualifications as well as their agents; and if, still further, the nature of the office be such that the tremendous ordeal of a severely contested popular election will not in any degree do it injury; will not deter learned men, if the office needs learning, from aspiring to it; will not tend to make the successful candidate a respecter of persons, if the office requires that he should not be; will not tend to weaken the confidence and trust and affectionate admiration of the community toward him, if the office requires that such be the sentiments with which he should be regarded—then the people should choose by direct election. If, on the other hand, from the kind of qualifications demanded, and the place where their display is to be made, an agent of the people, chosen by them for that purpose, can judge of the qualifications better than they can; or if, from its nature, it demands learning, and the terrors of a party canvass drive learning from the field; or if it demands impartiality and general confidence, and the successful candidate of a party is less likely to possess either—then the indirect appointment by the people, that is, appointment by their agent, is wisest." (See *Debates in the Massachusetts Convention*, vol. ii., p. 805.)

CONFLICTING APPLICATIONS OF THE TEST.

New York and Massachusetts, both accepting this test, have made different applications of it to the judiciary. Here the people, through their Legislatures, through Constitutional conventions, and, as lately as two years ago, through a vote upon the exact question, have decided that the judicial office is one which can best be filled by direct election. There, on the contrary, it is determined that the best bench in the long-run is secured by appointment by the Governor.

THE TENURE OF THE JUDICIAL OFFICE.

In regard to the tenure of the judicial office, there is no such common test—with or without diverse applications of it. There are conflicting considerations; some of which must give way to the others, whichever tenure be adopted, whether for a limited term of years or during good behavior. In favor of the latter is the consideration of the greater independence of the judge from external influences; and also the superior inducement which a tenure that is practically for life extends to learned men of small pecuniary fortune over a tenure the term of which they may survive at the risk of exposing themselves to pecuniary distress in old age. In favor of the former is the consideration of moderating the arrogance with which the character of the tenant of any office for life is apt to be sullied by the very fact of his independence.

It depends much upon the character and genius of any community which set of considerations shall prevail with it upon this subject. Here we have lately fixed fourteen years as a limitation of the term of our highest judicial offices. The Massachusetts system, on the contrary, adheres to the tenure of good behavior, the argument for which never has been better stated than it was by Hamilton in the seventy-eighth number of the *Federalist*. That system aims to render the judge "as independent as the lot of humanity will admit;" that is to say, to endow him with office during life, or (its practical equivalent) during good behavior. Our system aims to render the judge as independent as is consistent with our notion of the public welfare; and we have determined that this purpose is best served by a limitation of his office to a fixed term of years.

THE QUESTION OF AN ELECTIVE JUDICIARY NOT FAIRLY INVOLVED IN THE RING DECISIONS.

Such is a rapid and fair summary of the arguments for and against each of the two systems. Now, in order to determine whether the conduct of the Court of Appeals in the Ring cases justly makes for or against either system, it is needful to consider not only what that conduct was, but how the bench was constituted that was guilty of it; and this we have already done. As to the decision in the Tweed *habeas corpus* case especially, the drift of public opinion is not uncertain. Outside of the city of Rochester, nineteen in every twenty lawyers will agree that the case was one in which the court easily could have found law enough to hold Tweed a prisoner under his cumulative sentence if it had been disposed to do so; and outside of the city of New York public opinion as to the moral nature of the result is even more nearly unanimous. As regards authorities and precedents which would have warranted a contrary decision, they have recently been poured on the court and the public by the bucketful. But it is further necessary to consider who was Governor of New York in 1870, and what control the Combined Rings then exercised in the executive chamber as well as in the legislative halls and all the political conventions; and when we do so, it is plain that the trouble from which the people are suffering with this Court of Appeals is not at all due to the fact that it was the offspring of election rather than of appointment, but to the fact that it was the offspring of two corrupt Rings which were dominant and aggressive over the whole body politic.

THE ESSENTIAL JUDICIAL QUALITY.

The main utility of an appellate tribunal in the last resort is the same which has been sought and generally found in trial by jury; that is to say, it secures impartiality. It has been said that the first judicial quality is fairness, the second common-sense, and the last, and (however valuable in itself) the least important, is learning. In choosing trial by jury, reference to this last quality is entirely dispensed with, and much hazard is incurred that but a small share of the second may be present. But the sacrifice and the hazard are freely incurred for the sake of that which is esteemed the most valuable quality of a trier, whether in law or fact—to wit, fairness, or impartiality. So the aim of wisdom in constituting courts of ulterior appeal or in the last resort is to secure for the final hearing that higher and purer atmosphere which is likely to prevail where no local, partisan, or individual prejudice holds sway. Appeal judges are not commonly selected from a supposition that they possess greater ability than those judges who hold the subordinate courts. This was evinced in the selection of the present bench of the Court of Appeals. A majority of its seven incumbents, including the Chief Judge, had no previous judicial experience. It has been conspicuously manifested in the ancient constitution of the highest judicial tribunal of Great Britain. There, as well as in the Supreme Court of the United States, the quality above adverted to as the first judicial requisite controlled. Local feeling can not prevail in the latter; and if its judges were relieved from circuit duty, its organization as a court of last resort would be perfect.

THE EXPERIENCE OF THE STATE OF NEW YORK,

under its successive differing judicial arrangements, furnishes the best guide to a judgment on this subject. No student of the law can fail to remember that the culmination of the authority of the decisions of the ultimate tribunal in this State as precedents for other States was reached during the time of the Court of Errors, which lasted seventy years, from 1777 to 1847, and was followed by that Court of Appeals which preceded the present court from 1847 to 1870, twenty-three years, while the present court is in its infancy, being only five years of age. Each of these three courts was constructed in a manner differing materially from the construction of the others, and for this reason it may serve a useful purpose to describe their several forms, and to give some brief account of the judicial working of each of them.

THE COURT OF ERRORS

consisted of the Lieutenant-Governor, the Senators, the Chancellor, and the Supreme Court judges, and contained thirty-seven members. Thirty-three of them were elected for terms not exceeding four years, and only a moderate portion of these were taken from the legal profession. It was a fluctuating body, and a case rarely was heard by more than two-thirds of the members. Those who doubt the fitness of electing judges would, at first blush, condemn such an arrangement; but fuller reflection might remove their objection. Undoubtedly it was ill adapted to the transaction of ordinary judicial business. Still, as a court of ultimate resort, after a case had passed through one appellate examination, it may have had precisely the qualities most to be desired. It was a numerous body; its members necessarily were chosen from distant points; no absolutely controlling majority was likely to be composed of, or, in judicial matters, influenced by, any clique or faction, and if a suit or defense was instituted with sinister reference to the probable influence of a party then in power, that influence, if in fact it existed, was apt to be weakened or wholly removed before the case came into the court. The lack of technical learning in many of the members was found to be rather an advantage than otherwise. It opened the way to a freedom of thought and inquiry by which the law often was liberated from thralldom to ill-considered or misapplied precedents. Narrow conceptions unfavorable to a general principle are generated in the routine studies of professional men, and are blindly followed from habit. A court of this liberal form must ever be open to considerations of this kind, nor is it likely to disregard wise precedents or to act capriciously. The ablest and the most conservative of the practicing jurists of New York in the last generation were of one mind in commending the Court of Errors as an admirable institution. Partiality was never even surmised there, except in two or three rather trifling cases. (For an instance see 19 Johns., 391; 1 Hammond's *Political History of New York*, c. 26, p. 547.) It well may be doubted whether there was any just ground for suspicion even in those instances. In its difference with the Supreme Court on the vexed question whether fraud in certain transfers was not exclusively a question for the jury, the ultimate judgment of the profession certainly has been against it. But that was a pure question of expediency: an issue never could have arisen as to the motive of any conclusion of the judicial mind in that regard. In most, if not all, its other reversals in any matter of importance, the court won moral triumphs of an enduring character. The decision in 8 Cowen, 738, for example, always will command respect. After the defense had been repelled for want of a precedent, the court decided that a landlord who had intruded a moral pest upon his tenant could not recover. Again, by a singularly blind application of a rule purely technical concerning *lis pendens*, which they ought to have understood, all the judges agreed to a most unrighteous claim. But a village lawyer, who happened to sit in the Senate, gave the law as it was, and the whole court, concurring with him, reversed the judgment below. (See 11 Wend., 466.) That court also, ruling by reason instead of by mere words, curbed the obstinate persistency of the judges below in favoring monopolies, and thereby established a benign policy in banking which has ever since prevailed. (See 23 Wend., 190; 1 Denio, 18; 2 *Ib.*, 402.) These exemplifications of its qualities might be greatly multiplied did space permit. The comparatively brief term of its successor presents a much less creditable record.

THE FIRST COURT OF APPEALS,

established in 1847, consisted of only eight judges. They were all elective, for terms not exceeding eight years; but unless re-elected, four of them went out of office every year, and in every second year a fifth. It was therefore a fluctuating body, though not in so great a degree as the Court of Errors. In the nature of things, lawyers only were elected to it. Some specimens of its proceedings deserve especial attention. Corporations afford facilities for peculiar forms of fraud, and this court showed a singular proclivity for aiding adventurers in that very branch of human enterprise. Sometimes a corporation pledges its whole means for ready money, squanders or loses the money, and passes into insolvency. In such a case its property stands encumbered in favor of creditors to the whole value, and by consequence its stock becomes substantially worthless. The stock then may be bought up by speculators for the merest trifle; and if on any technical ground the debts can be repudiated, that stock, as shares in the distribution, becomes worth par. These floating shares, too, form very convenient instruments of corruption. They cost but little; some of them may be given to acute legal practitioners, who thus are clothed with a contingent interest; and more may be passed to individuals occupying peculiar relations to the controversy or to its decision. Two notable cases of this class went into the former Court of Appeals of this State. The first, commonly called the *Dry Dock case*, involved about $400,000. The scheme succeeded. A debt to just about this amount, owing from a broken New York corporation to English bankers, was repudiated in the Court of Appeals on a very sharp plea of usury. (See the opinion of the court, rendered by the Hon. ADDISON GARDINER, 3 Comst., 344.) This decision may have been perfectly sound law; but nothing like it ever had occurred before, and the result outraged the moral sense of the whole country. Mr. E. D. MORGAN (since Governor and United States Senator), then in the State Senate, presented to that body a report upon it from a committee of which he was chairman. Deploring the facility with which under the law so construed "dishonest men may avail themselves of it to perpetrate gigantic robberies, provided there is any such thing as robbing according to law," he recommended the enactment of a bill forbidding any corporation ever thereafter to interpose the defense of usury. The bill was enacted. (See Laws of 1850, p. 334.) Several other States immediately adopted similar statutes; perhaps every State in the Union now has done so. That Dry Dock "grab," however, was a mere flea-bite to what came afterward. The *North American Trust case* also affected foreign creditors in precisely a similar manner, and involved $2,000,000. The same volume of the reports (3 Comst., 19) records its incipient stage. A precedent was established, as I have shown, imperiling the creditors, and other decisions followed in the same vein, until, in *Talmage* v. *Pell*, a judicial resolution was adopted which was deemed a "clincher." (See the opinion of the court per the Hon. ADDISON GARDINER, 3 Selden, 347.) Each of these cases, however, involved but little money; they merely formed precedents; and when the great case, involving the $2,000,000, was reached, the precedent-making judges had mainly gone out of office, and this fluctuating feature of the court saved the English creditors. They prevailed by the votes of new judges, S. L. SELDEN and another dissenting. (See 15 N. Y., 294, and 17 N. Y., 547.) The first decision having thus been repudiated by the Legislature, and the second attempt at a "grab" having been defeated by changes in the *personnel* of the court, the honor of the State was saved; but it was a narrow escape. The first decision in the New Haven *Schuyler cases* was an approximation to similar mischiefs. It held in effect that a corporation was not responsible to the individual for the acts of its agent. Equally unjust was the *North American Trust case*. It met precisely the same fate as that did, and from the very same cause. The makers of the evil precedent went out of office, and when the principal case came up before a new set of judges, they refused to be fettered by the supposed precedent, and enforced against the corporation the behests of justice. Judge NOAH DAVIS was one of these new judges, and delivered the opinion of the court. If, under Judge ALLEN's new "propeculator law," he shall be punished for his unkindness toward TWEED, that opinion at least will help to rescue his name from the intended dishonor. (See 34 N. Y., 44.)

THE PRESENT COURT OF APPEALS.

In 1870 the present Court of Appeals came into power—a court differing radically in its frame-work from any ever before known in the judicial system and policy of this State; and it still reigns with a confidence on the part of its judges of a secure tenure for many years to come. The number of the judges is only seven—the smallest ever known on the bench of the ultimate tribunal. They all were elected for terms of fourteen years, with a restriction in respect to age, rendering it improbable that more than one or two of them ever would go out of office at one time. Such a constitution of the court certainly was adapted to preclude any such instability of power and purpose as had proved so fatal to money-making combinations in the instance of its predecessor. Thus there was organized only five years ago a close corporation endowed with the supreme judicial authority. That "drop in the bucket," a single member coming in now and then, scarcely could affect the oligarchical power, if an oligarchy once could be established, and I refer to the review of the Ring decisions of this court for proof that it has been established. As the latest and crowning demonstration of the dishonor which it casts on the justice of the State, I learn from trustworthy authority that by reason of its decisions, and that of Judge DONOHUE (which I have recounted), in the City Ring suits, it has been deemed necessary, upon consultation of the counsel engaged in prosecuting legal proceedings which had been instituted against SWEENY and CONNOLLY in the foreign countries to which they fled, to suspend those proceedings until either we get a new Court of Appeals or the present court shall emancipate itself from slavery to the evil influences which control it.

THE QUESTION FOR THE PEOPLE

is whether a court of final appeal is worthy to continue which is or may be a permanent cabal. Originating as it did in the worst of times, when the slime of peculation besmeared the whole machinery of the city and the State, I believe that I have shown that its brief career exhibits unseemly specimens of servility to the corrupt men in whose favor its bench was generated. I believe, in a single word, that the facts which I have marshaled show that such a court is not a safe depositary of the supreme judicial power. Perhaps the court of ultimate appeal should be restrained from dealing with mere practice motions, and be occupied only with the great questions of right. Perhaps its judges need not all be professional lawyers. Perhaps they ought to be more numerous, and to be elected for short terms, so that, like the old Court of Errors, they may include at all times representatives not merely of the technical learning of the State, but also of its agriculture, its commerce, and its finance. Thus the people might escape from thralldom to judicial cabals, and find, as of old, in the healthy freedom of thought and speech, and the collision of various mental forces naturally springing from such a fair and open representative body, common-sense and common law ever co-operating to prevent the triumph of misapplied technicalities over common justice.

I have the honor to be, Sir,
Your obedient servant,
ALBERT G. BROWNE, JUN'R.

NEW YORK, *September* 20, 1875.

SUSAN'S MISTAKE.

AMONG all the trim house-maids in Bloomsbury not one could compare with Susan Biffin, who had the privilege of being a servitor in the mansion of Mr. Jobbins, alderman and tallow-chandler of the City of London.

Not only did Susan excel in the neatness of her dress and the cheerfulness with which she performed her duties, but she also carried off the palm with respect to personal appearance, as would have been admitted by any one who observed her pouting mouth, ruddy cheeks, bright full black eyes, and the pleasant smile which constantly shed light over her features, and helped to enhance the charms with which nature had endowed her.

Susan Biffin was an extremely well conducted girl, and knew more than most people in her station of life, inasmuch as her parents (now dead) had been respectable trades-folk, who in the latter portion of their life had fallen into difficulties, but had taken care that, despite the wrecking of their worldly prospects, the education of their only child should not be neglected.

Thus much for Susan's advantages. Now let us look at the reverse of the medal. The pretty house-maid's chief fault was that she was in love —and desperately, too—a circumstance which, of course, called forth the severest censure from her mistress, who, to her credit be it said, took an interest in her servants not often manifested by people of such rank as the wife of this City magnate.

Mrs. Jobbins had four daughters, marriageable years upon years ago, and who as yet had never had the ghost of an offer. Now, of course, it would have been a commendable thing had these vestals fallen in love, and set their foot firmly on the road which leads to Hymen's temple; but with a young servant ætat. twenty it was a very different matter. Mrs. Jobbins took the affair up warmly, as did also the vestals alluded to, and persistently informed Susan that if she knew when she was well off, she would remain single, etc.; in fact, if possible, the young ladies expressed a greater horror of matrimony than even their mamma, and went about the house declaiming against the perfidy of mankind in terms that would have fully qualified them to become shining lights in any society of female celibates, although, as cook sententiously remarked in the sacred precincts of the kitchen, "If their ma hadn't married Mr. Jobbins, where on earth would they have been? A good job, perhaps, if their ma had remained single." From this remark of cook's, who also had a sweetheart, it may be inferred that the Misses Jobbins were not quite so well liked "down stairs" as their maternal parent.

Perhaps, however, the great reason for Mrs. Jobbins's dislike to Susan's courtship was that the pretty house-maid had fixed her affections upon what Mrs. J. termed a "theatrical," but what Susan always spoke of as a Harlequin.

The intimacy between Susan and her betrothed was still young, but on one side at least it seemed as though it had existed for years, inasmuch as Susan was a tender, sympathetic creature; and when Herr Kiddini fell upon his knees at the house of a mutual friend, and with uplifted arms begged her to be "his," she at once yielded him all the affection her fresh young heart was capable of bestowing.

The Harlequin, however, was not Susan's first sweetheart. Such a neat, pretty girl could not fail to have plenty of admirers among the sons of the small tradesmen resident in the neighborhood. The time had been when Susan had almost determined upon becoming the wife of an enterprising young grocer named Perks, who had recently opened a business of his own, and was said to be thriving.

Susan really liked Perks, but the roseate hues of courtship were darkened by some trumpery lovers' quarrel; and as Susan said Perks was in the wrong, and Perks declared that Susan was entirely at fault, the affair resulted in a parting. Neither would give way, and neither would agree to the mediation of a third party; so Susan at once returned all the little love gifts which Perks had lavished upon her.

The jealous young grocer's parting words were that he hoped she would not make a mistake, and that he felt she would repent of her conduct to him; at which Susan disdainfully tossed her head and turned away. Thus ended one love episode in the pretty house-maid's life.

Herr Kiddini was, as Susan had stated, a Harlequin at Christmas-tide, and a teacher of dancing and calisthenics throughout the remainder of the year. Our heroine met him first at the abode of a married friend, who had once been a fellow-servant in the Jobbins's mansion, and that spirit of curiosity which seems to be excited by all who are in any way occupied before the foot-lights invested Herr Kiddini with an importance he would otherwise not have possessed. He was decidedly *not* a good-looking man—his eyes were sunken and fringed with thick lashes, and a slight mustache failed to hide the sinister expression of his mouth. But the fact of his being "on the stage" blinded Susan and Susan's friends to every thing else. Here they were at tea with the gentleman who to-morrow night would appear before a crowded audience in a tight-fitting dress covered with spangles, the grace of whose dancing elicited such applause, who bore the wand which turned every thing into something totally different, and who jumped through shop windows with an agility that was vainly emulated by Clown and Pantaloon. Herr Kiddini was a moody man, not given to much conversation; still he had sense enough to perceive that something was expected of him after the numerous slices of bread-and-butter and sundry cups of tea that had passed down his capacious throat, so he invented a few stories relative to his career, always taking care that he should appear in the most favorable of lights; and ere the evening had closed he had so far succeeded in winning the good-will of Susan and her friend the cook, who accompanied her, that Herr Kiddini was the principal subject of conversation between them throughout the week.

How great was the astonishment of both when, a few days after, a thumb-stained letter arrived for Miss Biffin, inclosing an "order" for two for the upper boxes at the theatre at which Kiddini was engaged, and a greasy half-sheet of note-paper, with the words "Otto Kiddini's compts." scrawled thereon! The receipt of this courtesy demanded that Susan should, with cook's assistance, concoct a letter of thanks to the great Terpsichorean artist. The letter took some time to write, because, as cook remarked, it wouldn't "do to be too for'ard or yet too distant." However, at last the happy medium was arrived at, and with many blushes suffusing her countenance, Susan dispatched, *via* the post-office, her first communication to Herr Kiddini. The next thing was to obtain the consent of Mrs. Jobbins that they might spend the evening together, because Susan declared she wouldn't go without cook, and the latter wouldn't accept the ticket for herself and a friend on any account whatever. Although it was awkward for both to be out on the same evening, Mrs. J.'s consent was won, and in the brightest of bonnets and warmest of cloaks the two girls went to see the pantomime in which Herr Kiddini took such an active part. Prosperity had not shed its golden rays upon the theatre of late, and there was plenty of "paper" to be had; so that when Susan and cook took their seats in the stuffy upper boxes and looked around them, they were not so disconcerted as might have been the case if money and not "orders" had prevailed. The pantomime was played first that evening, so that the girls were not kept long upon the tenter-hooks of expectancy. The "opening" seemed rather long; but there is an end to every thing, and at length the lamps were lowered for the "carpenter's scene" which was to usher in the glories of the transformation. The usual bevy of fairies appeared suspended in the air, there were the customary banks of impossible flowers, and the usual combination of colored fires. Then Kiddini in his party-colored Harlequin dress bounded upon the stage, the very perfection of grace and agility—at least so whispered Susan to cook, who nodded affirmatively—and throughout the rest of the performance he was to them the only object of interest. The merry sallies of the Clown, the senile observations of the Pantaloon, the feats of the apparently boneless sprites, the red-hot poker, and the spirited "rally" were in their eyes mere adjuncts to the dancing of Kiddini, and only gone through in order that he might have an interval of rest. Susan envied the active young person who appeared as Columbine, and began to think that dancing with Herr Kiddini must be the greatest pleasure life could afford. But just when the "comic business" seemed at its height, the green baize dropped upon a tableau of which their hero, supporting the Columbine on his knee with one hand, was the principal figure, and the pantomime was at an end.

Cook had barely time to comment upon the "loveliness" of the performance, when Susan felt a gentle tap upon her shoulder, and looking round, recognized the friend by whom she had been introduced to Kiddini.

"You ain't going to stop for the drama, are you? Kiddini said he'd sent you a order, and he gave me one too. 'Liza"—the speaker's wife —"is outside the boxes, and we're off, because Kiddini said he'd come round and have a bit of supper with us. You'd better come too."

The girls looked at each other, and then began to compare opinions. The friend's house was down a mews, within a stone's-throw of their master's, and as perhaps (as Susan suggested) the drama might turn out to be a stupid thing, they decided to leave the theatre with their friend. The chief inducement with both Susan and cook, however, was that there was a probability of Kiddini partaking of supper with them.

Their hopes in this respect were not disappointed. The great man arrived at their friend's house almost as soon as they did, made a very hearty supper, and was more agreeable and talkative than usual. As if by a preconcerted movement, Susan suddenly found herself alone with the Harlequin, and ere her friends re-entered the room she had become "engaged" to him, and had promised to become his bride in the following July, six months hence.

How long Kiddini took to declare his passion is a moot-point. Susan declared they were not alone more than five minutes, and that Otto's confession burst upon her like a bomb-shell; but cook averred that the arrangement took more than half an hour to settle.

That night Kiddini saw the girls home, and the sharp ears of cook detected the sound of a kiss while she was descending the area steps, leaving Susan to follow.

After this occasion more "orders" came, and Susan found frequent opportunity of meeting her Otto, whom, as she confidentially informed the trusty cook, "she loved more and more every time she saw him;" at which sympathizing cook would give an approving smile, and remark, "Very natural, my dear."

Susan's conscience occasionally smote her when she recalled her behavior to young Perks, the grocer, who, cook said, "felt her conduct much, and was reduced to a skelinton;" for the little quarrel which had separated them had really originated with her, and though all was over between them, and she was engaged to another, she could not bear to think that she had caused him any suffering. She often fancied she would have liked to go round to his shop and confess herself in the wrong, but after consultation with cook she came to the conclusion that such a course of proceeding might inspire hopes in the young man's breast which could never be fulfilled; so she resolved that matters should remain as they were. Susan was of a sensitive nature, and when the remark that had been made by cook relative to the manner in which young Perks was "falling away" recurred to her memory, it was with difficulty she could restrain the tears that dimmed the lustre of her black eyes. She tried to think that a "professional" of the rank of a Harlequin was a much better match than a small grocer, who had to stand behind his counter from eight in the morning until ten or eleven o'clock at night, with scarcely opportunity to have a comfortable meal during any portion of the day. Besides, as cook said, Kiddini was a gentleman, as any one could see, and with his aristocratic bearing and white hands, on one of which a massive ring shone conspicuously, was a fit match even for one of their young ladies—alluding to the Misses Jobbins, who, perhaps, would not have felt flattered by the allusion; still, on the other hand (not the Harlequin's other hand), there is a time in the life of a spinster when it seems as though she would be willing to marry any one, and it must be confessed this critical period was nigh at hand with the alderman's daughters.

During the early days of their courtship Kiddini was not the most attentive of lovers, and when taunted therewith, replied that his arduous exertions at night rendered him almost unfit for society. However, when he heard from their mutual friend's wife in the mews that he really must pay more attention to the pretty house-maid or she would rebel, and when his betrothed in a confiding moment showed him her savings-bank book, in which she was credited with the possession of £40, Herr Kiddini's affection received an impetus, and he became as ardent as could be wished. After the run of the pantomime his time was more his own, and, as he informed Susan, excepting the instruction of a few daily pupils, he had really nothing to do.

The stunted herbage of the square was beginning to give signs of vitality, the trees had already put forth their foliage, and troops of giggling nurse-girls with their infantine charges were to be seen perambulating the graveled walks, when Kiddini one evening, sitting alone with Susan in the little house down the mews, moodily remarked that the time was approaching when they were to seek the hymeneal altar. Of course Susan blushed and said nothing, which was very correct and proper. Then Kiddini, in still more gloomy tones, said that he had had rather a bad spring, inasmuch as some of his pupils had taken their departure from his Terpsichorean academy without paying for the lessons they had received, and that, in short, he had not the wherewithal to provide a home.

This somewhat disconcerted Susan, and quite unbidden there arose in her mind the image of the young grocer and his prosperous business; but Kiddini, who now became warm on the subject, suggested that if Susan would lend him £20 out of her little fund in the savings-bank, he would at once provide a home, and they would be married in a month. Kiddini had no doubts at all about the future; he had had an exceptionally bad spring, but the autumn might prove quite the reverse. This communication did not put Susan in a very hopeful mood; but she had pledged herself to Kiddini, and 'twas only right, she thought, that she should assist him in his adversity. She was not long making up her mind; and Kiddini, who had had infinitely less trouble over the matter than he imagined he would have, received the gratifying intelligence that Susan would at once give notice of the withdrawal of £20 from the savings-bank, and that the money should be in his hands in a fortnight's time.

Never had Kiddini manifested so much affection for his betrothed as on that evening. He was the most attentive, the most ardent, of lovers, and poor Susan almost felt inclined to cry with happiness. She was an affectionate creature, grateful for every word of tenderness, and the devotion now manifested by her future husband seemed to her full of the pleasantest auguries. "Poor fellow," she said to cook, on returning to her master's residence, "I am certain he loves me, and were it twice the amount, he should have it." In the monetary arrangement, however, a slight hitch occurred, inasmuch as Susan had forgotten that when she entered Alderman Jobbins's service that worthy's wife had introduced her to the savings-bank when she made her first deposit, but had taken care to have her own name inserted as trustee for her domestic, whereby the latter could not withdraw one farthing without Mrs. Jobbins's consent, verbal or written. This had escaped Susan's recollection until she hunted up her bank-book, and looked admiringly at the £40 with which she was credited. For some reason or other, for which Susan herself would have found it difficult to account, she would rather her mistress had known nothing of this withdrawal, but there was no help for it; so she boldly asked the consent of Mrs. Jobbins to what she wished. Great was her surprise when the alderman's wife, turning rapidly in her chair, told Susan that she would do nothing of the kind. "No," said the worthy Mrs. J.; "since you've been in my house, now nearly six years, I've watched over you, Susan, like one of my own daughters, and I'm not going now to see you taken in by a swindler."

"Oh, please, mum," interposed Susan, with a flush on her cheeks and an angry sparkle in her eyes, which made her look prettier than ever, "don't call him that!"

"Well, perhaps it *is* wrong to call the man names when I know nothing really of him," replied her mistress; "but, at the same time, I won't give my consent to the withdrawal of a penny until you're married; then, of course, you can do what you like with your money, and I wash my hands of the whole affair. Depend upon it, Susan, if your sweetheart means honorably, he'll marry you without wanting to borrow your savings; and as you are on the right side, keep so, Susan. Now go about your work like a good girl, and perhaps the time will come when you'll thank me for not letting you have the money until after you're married."

Susan courtesied submissively, and left the room; for she knew one might as well attempt to lift the Monument as turn Mrs. Jobbins when she had once made up her mind. Rebellious cook said it was a great shame, and she'd take good care no one was ever trustee for her; and Kiddini, as may be imagined, became frightfully morose.

But there the matter stood, and not all the remarks of cook, the anxiety of Susan, or the sullen temper of Kiddini could alter it.

"I've got a couple of pounds by me," growled Kiddini, "and with that I must put up the banns and live meantime. Suppose we say this day month—will that do?"

Susan blushed, and on the principle that silence gives consent, Kiddini stalked away with the understanding that he was to put up the banns and claim the pretty house-maid as his bride on the day signified. It was in no amiable spirit Kiddini sought his lodgings in a street off Drury Lane; and if the alderman's wife could have heard what he muttered relative to her welfare as he passed through the crowded courts and alleys, she would have been more opposed to the marriage than ever.

Oh, what an anxious period was the four weeks prior to the day when Susan was to become a wife! The pretty house-maid was an expert needle-woman, and, like an economic creature as she was, made the wedding dress herself—a slate-colored silk with spots, something that would prove useful on a future day, and which had been presented her by the Misses Jobbins, who, despite the fact that it was only one of their servants who was about to be married, took a wonderful interest in all that was going on, and spent a good deal more time in the kitchen than cook desired. Then there was Mrs. Jobbins, full of wise counsel and cautions as to the pitfalls of matrimonial life. Every one in the house thought it necessary in some way to interfere in the marriage preparations.

At last came the eventful morn, and Kiddini, leaping from his couch and peering through the slip of blind which adorned the dirty window of his lodging, observed with no feelings of delight that the rain was descending in torrents.

"Humph!" he growled; "obliged to have cabs now, I suppose."

Involuntarily his hand sought his trowsers pocket, and then, finding that the sum of five-and-sixpence was contained therein, he began to make his toilet.

It certainly was a depressing morning: the boughs of the trees in the square drooped in the wet, the rain pattered steadily upon the pavement, and a warm, close atmosphere increased the general gloom and dejection.

Susan was to be married from the house in the mews, where her intimacy with Kiddini had begun; and wishing good Mrs. Jobbins and her daughters farewell, with tears in her eyes she started for her friend's house the night prior to the bridal. Cook, of course, was to be principal bride-maid, and insisted that none but herself should arrange the slate-colored silk, lace shawl (a parting present from Susan's late mistress), and white tulle bonnet. Nine, ten, eleven o'clock, and still the rain descended as steadily as ever. Poor girl, it was not a very pleasing commencement of her wifely career; but cook succeeded in eradicating all traces of her emotion just as the bridegroom with three cabs rattled up to the door.

On their way to the parish church they were compelled to pass the shop of the rejected Perks, and Susan could not refrain from turning her eyes in that direction. She noticed that the shop was full of customers, and—yes, there was her former betrothed, with black apron tied tightly round his waist, darting about his premises as busy as a bee in his efforts not to keep his customers waiting.

"He seems to be doing well; the shop is full," remarked Susan to her chief bride-maid.

"People say he's got the best business in the street," responded cook.

Susan breathed a sigh, and wondered, after all, whether she had taken sufficient notice of Perks's caution, and had indeed made a mistake—whether a penniless dancing master was so many degrees superior to a prosperous grocer. She had not much time for reverie, as in a moment the cabs dashed up to the church door, and Susan had to run the gauntlet of a line of admiring women and children, who, despite the drizzling rain, had gathered to witness the marriage *cortége*.

The bride shivered as she got out of the vehicle, and without waiting for her lover's arm, hurried out of the damp air into the church. Expecting that Kiddini would immediately follow, Susan became somewhat surprised when five minutes elapsed and he had not made his appearance; still more astonished was she when, going to the church portal to see what detained him, she observed her betrothed tightly clasped by a gaunt, wretched-looking woman, and five poorly clad children hanging on to his arms, legs, coat tails, and other portions of his clothes capable of seizure.

"What—what is the meaning of this?" inquired Susan, her eyes flashing with indignation.

Not a word escaped Kiddini, who, with pallid face, remained perfectly helpless in the hands of those who had taken possession of him.

"Kiddini," exclaimed the bride, "why don't you speak?"

By this time the woman and children had dragged the bridegroom into the church, and the doors had been closed upon the rabble attracted by the disturbance outside.

When the woman knew that her prisoner could not escape, she released her hold, and turning to the indignant Susan, said:

"Begging your pardon, miss, this is my husband, and these are our five children, born in lawful wedlock. He deserted me and the little ones two years ago at Manchester, and since then I've been roaming about in search of him; and if it hadn't been for the rain this blessed morning, which made me take shelter here, perhaps I shouldn't have found him at all. His name's Tom Kidd, and not Kiddini, as you call him. Oh, miss, you've had a lucky escape!"

All the time the woman had been speaking her five children had not in the slightest degree relaxed their hold upon their long-lost father, but clung to him with a pertinacity that made the wretched creature seek a pillar for support. As for poor Susan, the words seemed to sear into her brain; but to doubt what she had heard was impossible when she glanced at the helpless Harlequin and saw his wretched plight.

"Take me home, cook, take me home," she said, resigning herself to her faithful friend; then entering one of the cabs which had awaited the conclusion of the projected marriage, she fell into a swoon.

When she got back to the little house down the mews it transpired that her friends knew scarcely any more of Kiddini than did Susan herself; they had met him at the abode of an acquaintance, and on the strength of a vague intimation that at any time they would be glad to see him whenever he passed that way, he had become a constant visitor to the house for some weeks prior to his meeting with Susan.

An overwhelming sense of the narrow escape she had had so preyed upon the mind of our heroine that a severe illness followed; but the Jobbinses—kind-hearted people as they were—insisted upon her being removed back to their house, where the skill of the family doctor and the tender nursing of cook soon restored Susan to health. While she was ill there was daily inquiry made at the area gate by Mr. Perks's shop-boy relative to the invalid's progress; and at last, when the roses again began to appear on her cheeks, Mr. Perks himself called. He blushed deeply when he encountered the gaze of cook, and pleaded that he had given his boy a holiday; but cook was a little bit too experienced to be deceived by such an excuse as that.

She asked Mr. Perks if he would not step into the kitchen to rest himself just for a few minutes, at which the grocer hesitated; but after a desperate effort he followed his friend down the area steps. He had not expected to see Susan, or of course he would not have come down into the kitchen; but when he was fairly inside the door, and saw her wasted form enveloped in warm shawls before the fire, he could not retreat with dignity without speaking. Just at that moment cook remembered that there were some fowls to be dressed for dinner, and that she must see about them without delay; so giving Mr. Perks a hearty grip of the hand, and informing him that he knew his way out when he wanted to go, this artful cook beat a hasty retreat, and closing the door behind her, left the young people alone.

It was very awkward, and in their innermost thoughts both considered cook a stupid, blundering thing.

The topic of the weather is soon exhausted, and Perks's delicacy would not allow him to converse much about Susan's illness, knowing the causes that had led to it. So they sat silently looking into the fire, until Susan, with her face suffused with blushes, said:

"I have for a long time been wanting to confess to you that I was in the wrong when we quarreled, but have not had the courage to do so. My illness has taught me much—among other things, that I ought to acknowledge a wrong when committed, and that I ought never to intentionally wound an honest trusting heart. Mr. Perks—"

"No, Susan, call me Tom, as you used to do," interrupted Mr. Perks, his face glowing with as much color as the flaming coals into which he gazed.

"Well, then, Tom, if you wish it. I feel that I did you a wrong, and I know I caused you distress of mind at the time; but I am heartily sorry now, and I want you to forgive me. Will you?"

She raised her face as she concluded, and looked so pleadingly at him that Tom Perks felt a big lump rise in his throat, which rendered him speechless; but he seized her hand, and gave it so hearty a shake that his fervor proved almost too much for her weak condition.

"Tom," she added, when she had recovered a little, "you warned me once against making a mistake. I was a foolish girl then, and disdained your advice; had I been wise I should have heeded your words, for they have proved only too true."

"But," gasped Mr. Perks, "mistakes may be corrected, and it is never too late to mend. Let us suppose the past eighteen months have passed in a dream. In short, Susan, let us be to each other as we were once. My heart beats as warmly as ever for you. Will it take me long, do you think, to regain your love?"

A smile of happiness passed over Susan's face as she held forth her hand; and as he eagerly grasped it, it really seemed as though the past had been but a dream; for even when Kiddini's influence was strongest upon her, there had always been a lingering thought of Tom Perks in her memory; and now that he was again by her side, she experienced a sense of peace to which she had long been a stranger.

How pleasant was the story told in Mr. Jobbins's kitchen that autumn morning! And yet 'twas an old tale. But whether whispered under shady trees, in drawing-room, attic, or cellar, it has the same interest as of yore, and, until time itself shall cease, will remain ever fresh and dear.

The following year, when spring was lapsing into summer, another wedding party set out for the parish church, and this time there was no interruption to the service nor opposition on the part of Mrs. Jobbins and her daughters, who persistently expressed their opinion that in marrying Mr. Perks Susan had indeed acted wisely. The £40 in the savings-bank was not required, and in that secure depository the money remained for many a year afterward.

As for Kiddini, he is about the country pursuing his profession, but Susan has never seen him since the memorable occasion at the church porch, and save at Christmas-time, when her husband—now the owner of three grocery establishments in the metropolis—takes herself and the children to see a pantomime, her thoughts never revert to Harlequins or their associations.

Amidst her prosperity Susan does not forget her old acquaintances, and there is always a hearty welcome for cook whenever she likes to call. Susan's sympathetic heart often bleeds for her friend, who has married a house painter, earning in his best times twenty-eight shillings per week, and who is given to spending his wages in drink, and then ill-treating his wife. Perhaps the time is shortly at hand when cook will leave her husband and take up her abode permanently with the Perkses.

Thus Susan, after nearly committing an act which would have wrecked her future, has become transformed from the trimmest house-maid to the happiest wife in the district of Bloomsbury.

SAXON HOSPITALITY.

Our Anglo-Saxon forefathers were a hospitable race, although some of the laws that governed the relations between host and guest were extremely curious. If any one entertained a guest in his house three days, and the guest committed any crime during that period, his host was obliged either to bring him to justice or answer for it himself. By another law, a guest, after two nights' residence, was considered one of the family, and his entertainer was to be responsible for all his actions.

On the arrival of a stranger he was welcomed, and water was brought him to wash his hands; and his feet also were washed in warm water. At meals the parties sat at large square tables on long benches, according to rank, and by a law of King Canute, a person sitting out of his proper place was to be pelted from it with bones at the discretion of the company, without the privilege of taking offense. The mistress of the house sat at the head of the table, upon a raised platform beneath a canopy, and helped the provisions to the guests. From this came the modern title of lady, softened from the Saxon *lief-dien* or server of bread. The tables were covered with fine cloths, some of them very costly; a cup of horn, silver, silver-gilt or gold, was presented to each person. Other vessels were of wood inlaid with gold; dishes, bowls, and basins were of silver, gold, and brass engraved. The benches and seats were carved and covered with embroidery, and some of the tables were of silver. All tables were square at this period, but they were afterward replaced by the old oaken table of long boards upon trestles.

The food of the period consisted of meat and vegetables, and the tables were plentifully but plainly supplied. There were oxen, sheep, fowls, deer, goats, and hares, but hogs yielded a principal part of the provision. On this account swine were allowed by charter to run and feed in the royal forests. All the kinds of fish that we have now were eaten at this time, but herrings were preferred. The porpoise, now no longer eaten, was then a favorite dish. Bread was made of barley, and wheaten bread was a delicacy. Baking was understood as well as cookery; and if a person ate any thing half-dressed ignorantly, he was to fast three days; if he knew it, four. Roasted meat was a luxury, but boiling was general, and broiling and stewing were in use. Honey was used in most of the meals of the period, on which account, added to that of sugar not having been brought into England until the fifteenth century, the wild honey from the English woods became an article of importance in the forest charters. Fruits, beans, and herbs were commonly eaten, but the only vegetable was kale-wort. Peppered broths and soups and a kind of bouille were esteemed, and buttermilk or whey was used in monasteries. Salt was employed in great quantities both for preserving and seasoning all sorts of provisions.

In representations of Anglo-Saxon feasts the men and women are seated apart at table. A person is usually seen cutting a piece of meat off the spit into a plate held underneath by a servant. Cakes of bread upon oblong, square, and round dishes are on the table. The company sat on forms, the chief visitors seated in the middle, and the next in rank on the right and left. A dish on the table was set apart for alms for the poor; and when our Anglo-Saxon kings dined, the poor sat in the streets expecting the broken victuals from their table. At private parties two persons eating out of the same dish was a peculiar mark of friendship. Forks were not invented, and our ancestors made use of their fingers; but for the sake of cleanliness each person was provided with a small silver ewer containing water, and two flowered napkins of the finest linen. The dessert consisted of grapes, figs, nuts, apples, pears, and almonds. Festivals were given to the people on religious accounts. They kept them up the whole day on state occasions, and the feast was accompanied by music.

THE LOST BABIES.

Come, my wife, put down the Bible,
Lay your glasses on the book.
Both of us are bent and aged—
Backward, mother, let us look.
This is still the same old homestead
Where I brought you long ago,
When the hair was bright with sunshine
That is now like winter's snow.
Let us talk about the babies
As we sit here all alone,
Such a merry troop of youngsters:
How we lost them one by one.

Jack, the first of all the party,
Came to us one winter's night.
Jack, you said, should be a parson,
Long before he saw the light.
Do you see that great cathedral,
Filled, the transept and the nave,
Hear the organ grandly pealing,
Watch the silken hangings wave;
See the priest in robes of office,
With the altar at his back—
Would you think that gifted preacher
Could be our own little Jack?

Then a girl with curly tresses
Used to climb upon my knee,
Like a little fairy princess
Ruling at the age of three.
With the years there came a wedding—
How your fond heart swelled with pride
When the lord of all the county
Chose your baby for his bride!
Watch that stately carriage coming,
And the form reclining there—
Would you think that brilliant lady
Could be your own little Clare?

Then the last, a blue-eyed youngster—
I can hear him prattling now—
Such a strong and sturdy fellow,
With his broad and honest brow.
How he used to love his mother!
Ah! I see your trembling lip:
He is far off on the water,
Captain of a royal ship.
See the bronze upon his forehead,
Hear the voice of stern command—
That the boy who clung so fondly
To his mother's gentle hand?

Ah! my wife, we've lost the babies,
Ours so long and ours alone:
What are we to these great people,
Stately men and woman grown?
Seldom do we even see them:
Yes, a bitter tear-drop starts,
And we sit here in the fire-light,
Lonely hearth and lonely hearts.
All their lives are full without us:
They'll stop long enough one day
Just to lay us in the church-yard,
Then they'll each go on their way.

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